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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,)	Supreme Court No. _____
)	
Plaintiff-Respondent,)	
)	
vs)	COURT REPORTER'S TRANSCRIPT
)	
THOMAS EUGENE CREECH,)	
)	
Defendant-Appellant.)	
_____)	

BEFORE
HONORABLE J. RAY DURTSCHI
DISTRICT JUDGE

APPEAL from the District Court of the First
Judicial District of the State of Idaho, in and for the
County of Shoshone.

A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of Idaho, Capitol Building, Boise, Idaho, for and on behalf of the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho, appearing for and on behalf of the defendant-appellant.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff,

VS

THOMAS EUGENE CREECH,

Defendant.

Cr. No. 2165

REPORTER'S TRANSCRIPT

BEFORE

HONORABLE J. RAY DURTSHI

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and

LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,
appearing for and on behalf of the defendant.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff-Respondent,

vs

THOMAS EUGENE CREECH,

Defendant-Appellant.

) Cr. No. 2165
)
)
) LODGMENT OF COURT
) REPORTER'S TRANSCRIPT
) ON APPEAL
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RECEIVED from John W. Gambee, Official Court Reporter
of the above-entitled court, and lodged with me this ____ day
of _____, 1976, original plus _____ copies of
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

Deputy

1 WALLACE, IDAHO, SATURDAY, OCTOBER 11, 1975, 9:30 A.M.

2 (Jurors re-entered the courtroom.)

3
4 THE COURT: Let the record show the jurors are all
5 present.

6 Call your next witness.

7 MR. REMAKLUS: Call John Stewart.

8
9 JOHN STEWART,
10 a witness produced on behalf of the State, having been first
11 duly sworn, took the stand and testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. REMAKLUS:

15 Q Will you state your name, please.

16 A John Lee Stewart.

17 Q And where do you live, Mr. Stewart?

18 A Grangeville, Idaho.

19 Q And what is your age?

20 A Eighteen.

21 Q Are you in school?

22 A Yeah, I'm a senior.

23 Q Down there at Grangeville High School?

24 A Yeah.

25 Q And how long have you lived there at Grangeville?

1 Q About 16 years.

2 Q Do you have any part-time jobs in addition to going
3 to school?

4 A Yeah, I work at Mitchell Texaco and I work for my
5 grandpa during the summer.

6 Q Now, directing your attention to November 3rd, 1974,
7 were you living in Grangeville on that day?

8 A Yes.

9 Q And do you happen to remember what you were doing on
10 that day?

11 A I was working at Mitchell's Texaco pumping gas and
12 checking oil and stuff like that.

13 Q Right there at Grangeville, Idaho?

14 A Right.

15 Q And I'm going to ask you to look at a picture -- how
16 long have you been working at the service station? When did
17 you start working there?

18 A I started working around in October of '74.

19 Q Okay. Now, I'm going to hand you State's
20 Exhibit 28-A that's been admitted into evidence. Could you look
21 at that picture, please, Mr. Stewart.

22 Q (Witness complied.)

23 Q Have you seen that automobile that's in that picture?

24 A Yes, I did.

25 Q And when did you first see it?

1 A Well, the first time when they drove up to see if
2 they could get some gas.

3 Q And when was that?

4 A It was -- you want the time or the date?

5 Q Well, the day.

6 A It was November 3rd.

7 Q And about what time of day -- did you see the car
8 more than once on November 3rd, 1974?

9 A Yeah, I saw it twice.

10 Q Okay. Tell us about the first time, please.

11 A Well, the first time they drove in I ran out there
12 to see what they wanted and they asked me if I wanted to buy a
13 battery charger because they didn't have no money for gas. I
14 said "No" and they sort of talked with me a little while to
15 see if they could encourage me to buy it. I didn't have no
16 money with me so I didn't buy it. So, they left.

17 Q And who was -- how many occupants were there in the
18 car at that time?

19 A Three that I could see.

20 Q Can you describe the three that you could see?

21 A Well, the driver was about five-nine and he had a
22 moustache and he had short black hair, weighed about 150 and the
23 -- there was a girl that had long blonde hair, she was probably
24 about five-two or five-three and she weighed about 120 or
25 something like that. Then, there was another one that was about

1 six foot one, had a -- let's see, weighed about 190 and that's
2 about all I can remember of him.

3 Q And you recognize anyone here in this room as being
4 one of the occupants of that car that night?

5 A It's the defendant.

6 Q You are referring to --

7 A Creech.

8 Q -- the defendant, Thomas Eugene Creech?

9 A Yeah.

10 Q Now, did they leave the service station then after
11 their first visit?

12 A Yes.

13 Q Can you give us an idea what time of day that was,
14 John?

15 A Oh, it was probably about 7:40, somewhere around
16 there.

17 Q Then did they return to the station?

18 A Yeah, just as -- well, I was about ready to close
19 and they pulled in and I had the service station lights out and
20 they wanted to know if they could get some gas and I said yeah.
21 So, I gave them \$5 of gas and they gave me a \$5 bill.

22 Q Did any of the occupants -- about what time was
23 that?

24 A It was right around 8:00. I usually -- I close at
25 8:00 and remember looking at the time.

1 Q That was in the evening?

2 A Yeah.

3 Q Now, at either time -- well, both times the car in
4 that picture, was that the car that they --

5 A Yeah.

6 Q And during either one of these two times that this
7 car and the -- how many occupants were in it the second time
8 they came back that you could see?

9 A Three. Still the same.

10 Q Now, at either time did anyone get out of the car?

11 A Yes, the second time all three of them got out on
12 the passenger side.

13 The reason, I guess, was the driver's door was
14 jammed so they had, all three of them, get out.

15 Q And would you tell us -- well, all three got -- what
16 did they do; do you remember?

17 A Well, first Mr. Creech got out and then the girl
18 and then the driver. The driver came over and started talking
19 to me and I just asked him what he wanted and he just said
20 "\$5 worth of gas". So, that's what I gave him.

21 Q And did you happen to observe when they re-entered
22 the car?

23 A Yeah -- well, I was filling it up and the gas spout
24 was on the driver's side of the car and I looked inside and I
25 saw a sleeping bag and some beer cans on the floor.

1 Q Um-hmm. And then did they pay you for the gas?
2 A Yeah.
3 Q And which one of them paid for the gas?
4 A The driver did.
5 Q And did you watch them get back into the car?
6 A No, I didn't because I was -- well, after I -- they
7 gave me the money I put it in the "cashier" and by that time I
8 think they drove off so I didn't notice.
9 Q And what time of day? Could you give us an estimate
10 of the time of day that they drove off?
11 A Oh, I'd say probably took about ten minutes so it
12 would be about 8:10, something, somewhere around there.
13 Q And this, again, was in the evening; wasn't it,
14 John?
15 A Right.
16 Q Was it dark by then?
17 A Yeah, it got dark around 5:00 in November. So, it's
18 pretty dark.
19 Q Did you happen to notice which way this car was
20 headed when they left?
21 A No, I didn't.
22 MR. REMAKLUS: You may examine, Mr. Robinson.
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CROSS EXAMINATION

BY MR. ROBINSON:

Q Mr. Stewart, can you describe more accurately the person you stated was six foot one, 190 pounds?

A Well, I couldn't get a clear look at him because I wasn't that close to him in the station lights without -- except from the office where him and the girl stood. I was outside all the time and I didn't look that closely at him.

Q It was the six foot one, 190 pounder, and the girl that stood together?

A Right.

Q And the driver of the vehicle was who?

A I don't know who he was but just -- he was five-nine and he had short dark hair and weighed around 150; something like that. I don't know who he was or who any of them were.

Q Well, who was the person you identified as Mr. Creech, the gentleman sitting here next to me?

A The six foot one because --

Q The six foot one, 190 pounder?

A Right.

Q And it was the other person, the 150, five-nine, with a moustache that was driving?

A Yeah.

MR. ROBINSON: Mr. Creech, would you stand up, please.

Q BY MR. ROBINSON: Is this the six foot one, 190

1 pounder that was standing with that girl?

2 A. Yeah, I think --

3 Q. The six foot one, 190 pounder didn't have a moustache?

4 A. I can't recall.

5 MR. ROBINSON: I have no further questions.

6 MR. REMAKLUS: I have no further questions.

7 THE COURT: You may step down.

8 THE WITNESS: May I be excused?

9 THE COURT: The witness would like to be excused. Do
10 you have any objection?

11 MR. REMAKLUS: Just be seated for a minute, will you,
12 John. I may have a couple questions on redirect if I may,
13 Your Honor.

14 (Brief delay.)

15

16 REDIRECT EXAMINATION

17 BY MR. REMAKLUS:

18 Q. Could you tell us how you recognize the defendant
19 at this time, John?

20 A. I can't recall.

21 Q. Does it look like him?

22 A. Yes, a little bit. It's kind of hard to tell.

23 Q. Are you sure in your own mind this is one and the same
24 man?

25 MR. ROBINSON: Objection, Your Honor, this is --

1 THE COURT: Sustained.
2 MR. REMAKLUS: I have no further questions. Thank you.
3 MR. ROBINSON: No further questions, Your Honor.
4 THE COURT: Can he be excused?
5 MR. ROBINSON: As far as the defense is concerned.
6 MR. REMAKLUS: Yes.
7 THE COURT: All right. Yes, you may leave, Mr. Stewart,
8 if you want to.
9 Call your next witness.
10 MR. REMAKLUS: Call Ann Bradley.
11
12 ANN BRADLEY,
13 a witness called on behalf of the State, having been first duly
14 sworn, took the stand and testified as follows:
15
16 DIRECT EXAMINATION
17 BY MR. REMAKLUS:
18 Q Would you state your name, please.
19 A Ann Bradley.
20 Q And where do you reside?
21 A In Boise, Idaho.
22 Q And are you Mrs. Bradley?
23 A Yes, I am.
24 Q What is your occupation?
25 A I'm a criminalist with the Idaho Department of

1 Health and Welfare.

2 Q And in that capacity what kind of work do you do?

3 A We analyze evidence that's submitted to us, using
4 physical and chemical and biological means to determine certain
5 points which might be useful in a court of law.

6 Q And have you had -- what is your educational
7 background?

8 A I have my Bachelor's degree in biochemistry from
9 the University of California at Berkeley.

10 Q And have you had any special training in this field,
11 Mrs. Bradley?

12 A Yes, I have. I've attended a seminar in the typing
13 of dry blood stains that was given at Berkeley and in addition
14 I had a one-week course as a forensic chemist given by the
15 Bureau of Narcotics of dangerous drugs in Washington, D.C. and
16 a week of training at the regional laboratory at San Francisco.
17 This was in addition to a period of on-the-job training when I
18 began my current employment.

19 Q And what was your on-the-job training, Mrs. Bradley?

20 A This consisted of training by other more
21 experienced criminalists and as also consisted of seminars and
22 workshops given by professional societies during the course of
23 my employment.

24 Q Are you a member of any professional societies in
25 your field?

1 A. Yes, I am. I'm a member of the American Association
2 of Forensic Scientists and also the Northwest Association of
3 Forensic Scientists.

4 Q And were you so employed -- have you been so
5 employed all of this year?

6 A. Yes, I have.

7 Q Did you have occasion to conduct some tests of
8 objects in connection with this case?

9 A. Yes, I did.

10 Q And from whom did you receive such objects and what
11 were they?

12 A. From Mr. Bud Mason.

13 Q And who is he?

14 A. He's with the Department of Law Enforcement. They
15 were two evidence envelopes.

16 Q And do you have those evidence envelopes with you?

17 A. Yes, I do.

18 Q And could you produce them, please.

19 A. (Witness complied.)

20 Q Now, Mrs. Bradley, from the time you received those
21 envelopes have you had -- where have they been?

22 A. They've been either in my personal custody or in our
23 evidence vault at the laboratory.

24 Q And this is under lock and key?

25 A. Yes, it is.

1 Q Do you know about what date you received the two
2 envelopes?

3 A Yes, it was the 28th of April of this year.

4 Q And how were they delivered to you?

5 A In person by Mr. Mason.

6 Q Do you have them identified separately by number?

7 A Yes, they bear one laboratory number but they are
8 called "envelope one and envelope two."

9 Q Let's refer to envelope number two if you would,
10 please. Is it sealed at this time?

11 A Yes, it is.

12 Q And what was the condition of that envelope when
13 you received it?

14 A It was sealed across the top at the flap but the
15 bottom had not been cut in any way at that time.

16 Q And how did you -- did you open it?

17 A Yes, I did.

18 Q And how did you open it?

19 A I opened it at the bottom of the envelope, leaving
20 the original seal intact.

21 Q And when you were through with your testing then
22 what did you do?

23 A I put the remainder of the evidence, which had not
24 been used, back in the envelope and resealed it.

25 Q And is it sealed now at the bottom at this time?

1 A. Yes, it is.

2 Q. Would you please open the envelope and remove the

3 contents.

4 A. (Witness complied.)

5 MR. REMAKLUS: May I have this marked as State's 53.

6 (State's Exhibit No. 53 marked for identification.)

7 Q. BY MR. REMAKLUS: Then, Mrs. Bradley, handing you what

8 has been marked for identification as State's No. 53, would you

9 tell us what it is, please.

10 A. Yes. This is a clear plastic envelope which

11 contains some dark brown shiny solid material.

12 Q. And did you conduct scientific tests on the contents

13 of that envelope?

14 A. Yes, I did.

15 Q. And what kind of tests did you conduct?

16 A. The -- besides the original visual examination I

17 performed a Benzidine Test for the presence of blood and

18 immunodiffusion test to determine the species and the last test

19 an absorption-elution test; both of these last two tests are

20 to determine the blood group that it might belong to.

21 Q. And what conclusion did you arrive at?

22 A. That this material contained human blood, blood

23 Group A.

24 MR. REMAKLUS: I would offer State's 53.

25 MR. ROBINSON: Objection, Your Honor, lack of basic

1 foundation.

2 THE COURT: Will a foundation later be laid and connected
3 up?

4 MR. REMAKLUS: Yes.

5 THE COURT: Is that the only objection?

6 MR. ROBINSON: That's the objection I have, Your Honor.

7 THE COURT: All right, I'll admit it subject to being
8 connected up.

9 (State's Exhibit No. 53 admitted into evidence.)

10 Q BY MR. REMAKLUS: Mrs. Bradley, referring to the
11 other envelope, is it in the sealed condition?

12 A Yes, it is.

13 Q And what was its condition when it was handed to you
14 by Mr. Mason?

15 A I didn't hear the last part.

16 Q What was the condition of the evidence envelope
17 when it was handed to you by Mr. Mason?

18 A It was sealed at that time across the top.

19 Q And what, if anything, did you do with it?

20 A I opened the envelope at the bottom, took out the
21 contents, marked it and performed certain tests on it.

22 Q And then what did you do with the remainder of the
23 materials?

24 A It was replaced in the envelope and the envelope
25 was sealed at the bottom.

1 Q And did you put the seal on the bottom?

2 A Yes, I did.

3 Q And is that still intact?

4 A Yes, it is.

5 Q Would you open the envelope and remove the contents
6 please.

7 A (Witness complied.)

8 MR. REMAKLUS: Mark that as State's Exhibit 54, please.

9 (State's Exhibit No. 54 marked for identification.)

10 Q BY MR. REMAKLUS: Handing you what has been marked
11 for identification as State's Exhibit 54, would you tell us what
12 it is, please.

13 A Yes. This was a piece of cardboard which was
14 submitted in connection with this case and it has certain stains
15 on it, or discolorations, at any rate.

16 Q And did you conduct any tests on that, Mrs. Bradley?

17 A Yes, I did.

18 Q And would you explain what tests that you did
19 conduct?

20 A I performed the Benzidine Test for blood and also
21 the immunodiffusion tests to try to determine the species of
22 blood.

23 Q And did you arrive at a conclusion?

24 A Yes. I felt there was very probably blood as a
25 result of the Benzidine Test but I could not determine the

1 species of blood; that is, I could not say if it was human or
2 some kind of animal.

3 MR. REMAKLUS: I would offer State's 54, Your Honor.

4 MR. ROBINSON: Same objection, Your Honor, lack of basic
5 foundation and at this point testimony does not establish
6 reliability, materiality or relevancy.

7 MR. REMAKLUS: Again, Your Honor, we'll connect this up.

8 THE COURT: All right, it will be admitted subject to
9 being connected up.

10 (State's Exhibit No. 54 admitted into evidence.)

11 MR. REMAKLUS: You may examine, Mr. Robinson.

12

13 CROSS EXAMINATION

14 BY MR. ROBINSON:

15 Q Mrs. Bradley, other than your examination of those
16 two particular items, do you have any other information
17 particularly about this case, other than what you've just
18 testified to?

19 A No, sir, there's certain information on the evidence
20 envelopes which was not placed there by me which I have read,
21 but other than that I have no knowledge of other than what I've
22 testified to here.

23 Q These are the envelopes that you removed the items
24 from?

25 May I approach the witness, please.

1 (State's Exhibits 53-A and 54-A marked for
2 identification.)

3 MR. REMAKLUS: Is there an objection?

4 MR. ROBINSON: Same objection, lack of foundation and
5 I would like an opportunity for further cross-examination since
6 the envelopes are being offered.

7 THE COURT: You have the same objection, improper --

8 MR. ROBINSON: Lack of basic foundation.

9 THE COURT: All right, you represent they will be
10 connected up?

11 MR. REMAKLUS: Yes, Your Honor.

12 THE COURT: All right, 53-A and 54-A will be admitted
13 subject to being connected up.

14 (State's Exhibits 53-A and 54-A admitted into
15 evidence.)

16 MR. ROBINSON: Your Honor, if I may approach the Clerk
17 and then the witness?

18 THE COURT: Just a minute, let's see if he's through
19 with his redirect.

20 Do you have further redirect?

21 MR. REMAKLUS: Yes, Your Honor. I merely wanted the
22 witness to be sure that these are in the right envelopes.
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REDIRECT EXAMINATION

BY MR. REMAKLUS;

Q Handing you Exhibits 53 and 53-A, would you be sure that those are in the proper envelopes?

A. Yes, they are.

Q And that is -- which number is that envelope, the brown one?

A. The Exhibit is 53 and the brown envelope is 53-A.

Q And what was your number you testified to originally at the top?

A. That was called "envelope two".

Q All right. Would you put it back together, please.

THE COURT: Could I see that just a minute, please.

Q BY MR. REMAKLUS: And would you do the same with the second Exhibits.

A. Yes, Exhibit marked 54 in the envelope 54-A is the same Exhibit that originally came out of that envelope.

Q And you had lab number --

A. I called it "one of -- " that particular lab number?

Q Envelope number one?

A. Right.

MR. REMAKLUS: Thank you. I have no further questions, Your Honor.

MR. ROBINSON: If I may, Your Honor?

THE COURT: Yes.

1 RECROSS EXAMINATION

2 BY MR. ROBINSON:

3 Q Mrs. Bradley, handing you back both of those Exhibits,
4 take envelope one first if you would, please, and advise us what
5 writing on that envelope is yours.

6 A Under the lab number, the phrase "ENV. NUMBER ONE"
7 indicating this is number one of this case. The word "laboratory,"
8 there's some writing in pen and pencil, says "reported to" and
9 two different names that I wanted to remember to send reports to.

10 Right over the signature of Mr. Mason I wrote out
11 "A. Mason" in pencil for the secretary because I felt the
12 writing was slightly unclear. Down here "where received" in
13 my writing is "lab, by A. Bradley" and a time.

14 Q And the time is --

15 A 16:45.

16 Q All right. On that envelope any other marks that
17 you placed there?

18 A Yes. At the bottom, my initials to the front, my
19 name, the date on the back and that's what I wrote on this
20 envelope.

21 Q All right, now, would you pick up the other envelope
22 and give us the same information as to what writing you placed
23 on the envelope?

24 A The lab number in the upper-right corner and
25 "envelope two", the name "A.R. Mason" in pencil over his

1 signature and "where received" I filled in "Lab, by A. Bradley,
2 16:45."

3 After the analysis my seal was placed with the
4 initials on the front and signature and date on the back.

5 MR. ROBINSON: All right. Thank you very much.

6 I have no further questions, Your Honor.

7 MR. REMAKLUS: Thank you. You may step down.

8 May this witness be excused, Your Honor?

9 MR. ROBINSON: We have no objections, Your Honor.

10 THE COURT: You may be excused if you wish to leave,
11 Mrs. Bradley.

12 MR. REMAKLUS: May we have a brief recess prior to
13 calling our next witness, please.

14 THE COURT: Well, all right.

15 If you will remember the admonition, ladies and
16 gentlemen, don't discuss the case and keep your minds open.
17 We will advise you when we're ready to proceed.

18 (Recess taken.)

19 THE COURT: Show the jurors are all present.

20 Call your next witness.

21 MR. REMAKLUS: Call Carol Spaulding.
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1 CAROL MARIE SPAULDING,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q Just have a seat right there.

8 Would you state your name, please.

9 A Carol Spaulding.

10 Q What is your age, Miss Spaulding?

11 A Eighteen.

12 Q Where have you been residing?

13 A The Nevada State Prison.

14 Q And how long have you been down there?

15 A Since May.

16 Q And before that where were you for awhile?

17 A Idaho State Prison.

18 Q Now, Miss Spaulding, are you acquainted with the
19 defendant, Thomas Eugene Creech?

20 A Yes.

21 Q When and where did you meet him?

22 A Fresno, California.

23 Q About when was that?

24 A September, 1974.

25 MR. REMAKLUS: Your Honor, may I question the witness

1 from over in that direction so the jurors can hear her?

2 THE COURT: Well, Miss Spaulding, speak a little louder
3 so the jurors can hear and maybe face them and perhaps speak to
4 the juror over in the corner there. She's the farthest away.
5 Thank you.

6 Q BY MR. REMAKLUS: Miss Spaulding, after you met the
7 defendant in California did you travel with him for awhile?

8 A Yes.

9 Q Did you eventually go to the World's Fair in
10 Spokane?

11 A No.

12 Q Did you go -- tell me where you went in the State
13 of Washington, then.

14 A Clarkston.

15 Q And from Clarkston did you go to Lewiston, Idaho?

16 MR. ROBINSON: Objection, Your Honor, leading and
17 suggestive.

18 THE COURT: Sustained.

19 Q BY MR. REMAKLUS: Miss Spaulding, when did you -- or
20 did you return to Idaho from California?

21 MR. ROBINSON: Objection, leading and suggestive.

22 THE COURT: Sustained.

23 Q BY MR. REMAKLUS: Miss Spaulding, where, if
24 anywhere, did you and Mr. Creech go after you met?

25 A To Kentucky.

1 Q And where, if anywhere, did you go after you were in
2 Kentucky?

3 A To Lewiston.

4 Q And is that Lewiston, Idaho?

5 A Yes.

6 Q And when was that?

7 A Halloween last year, end of October.

8 Q The end of October?

9 A Yeah.

10 MR. ROBINSON: Sorry, Your Honor, I didn't hear the
11 reply. I'm sure the jury can't.

12 THE WITNESS: The end of October.

13 Q BY MR. REMAKLUS: Would that be last year?

14 A Yes.

15 Q And where did you stay in Lewiston?

16 A At a hotel and at my mother's house.

17 Q Did you have occasion to spend the night at your
18 mother's house?

19 A Yes.

20 Q And what is your mother's name?

21 A Martha Spaulding.

22 Q And what is her address?

23 A 2403 Eighth Avenue.

24 Q There in Lewiston, Idaho?

25 A Yes.

1 Q And directing your attention -- or do you know what --
2 did you stay overnight with your mother?

3 A Yes.

4 Q And do you know what night you stayed with her?

5 A No.

6 Q Did you -- was Mr. Creech with you at that time?

7 A Yes.

8 Q Did he stay at your mother's house also?

9 A Yes.

10 Q And directing your attention to the -- to early
11 November on the 3rd, the third day of November, were you at
12 your mother's place in Lewiston?

13 A I don't think I was. I could have been.

14 Q How long did you stay there in Lewiston?

15 A Approximately a week.

16 Q And when you left Lewiston where did you go?

17 A Towards Boise.

18 Q How were you traveling?

19 A Hitchhiking.

20 Q And who were you with?

21 A Thomas Creech.

22 Q And, Miss Spaulding, handing you what --

23 MR. REMAKLUS: May I approach the witness? I think the
24 Exhibits are up here.

25 THE WITNESS: Won't I be able to have a lawyer?

1 THE COURT: Well, if you want to talk to me about it.
2 Do you have some question about that?

3 THE WITNESS: I'd like a lawyer before I finish.

4 THE COURT: Before you go on with your testimony?

5 THE WITNESS: Yes, sir.

6 THE COURT: Well, we'd better take this up out of the
7 presence of the jury.

8 You will be excused, ladies and gentlemen, a brief
9 recess before we take this matter up. If you will remember,
10 don't discuss the case and keep your minds open. The Bailiff
11 will advise you when we're ready to proceed.

12 (Jurors left the courtroom.)

13 MR. ROBINSON: Your Honor, I'm sorry, I was communicating
14 with Mr. Creech and I missed what the Court had said, or what
15 Miss Spaulding said.

16 THE COURT: Miss Spaulding asked me if she couldn't have
17 a lawyer.

18 MR. ROBINSON: I see. Thank you, sir.

19 THE COURT: Can you tell me, Miss Spaulding, on what
20 basis you desire a lawyer? Why you want one?

21 THE WITNESS: I think just because I don't know what to
22 say or --

23 THE COURT: Are you concerned that you might incriminate
24 yourself by what you say? Is that what you are concerned about?

25 THE WITNESS: Yes.

1 THE COURT: Are you able to hire your own lawyer or do
2 you want me to appoint one?

3 THE WITNESS: Appoint one, please.

4 THE COURT: You want me to appoint one?

5 THE WITNESS: Um-hmm.

6 THE COURT: Well, Counsel want to participate in this in
7 any way? Any statement Counsel want to make?

8 MR. REMAKLUS: Well, Miss Spaulding is not charged in
9 this matter and is not a suspect. We see no reason for the
10 appointment of counsel at this time.

11 THE COURT: Mr. Robinson?

12 MR. ROBINSON: Yes, Your Honor, our investigation of
13 this case brought to my mind approximately two months ago that
14 Miss Spaulding should have counsel and I believe some of the
15 Court's papers that were submitted by the Prosecution made
16 reference to the fact that I had conversation with her and had
17 also recommended -- at that time she was represented by
18 Mr. Michael Lee, a Boise attorney, regarding the custody of
19 Benjamin Allen Spaulding, her son born June the 30th.

20 Our investigation definitely indicates that
21 Miss Spaulding needs and desperately needs legal advice of her
22 own.

23 THE COURT: The only basis on which she would need legal
24 counsel, as a witness, would be if she might tend to incriminate
25 herself by her testimony.

1 In what way do you feel she could incriminate
2 herself?

3 MR. ROBINSON: Her total involvement in the deaths of
4 Arnold and Bradford.

5 THE COURT: I -- perhaps, since Miss Spaulding wants to,
6 has a question about exercising her rights against
7 self-incrimination, I, perhaps, shouldn't direct any questions
8 to her but let me ask Counsel if my understanding from some
9 knowledge of the records and files of this Court in this case
10 that Miss Spaulding has previously been convicted as an
11 accessory in this case. Is that not correct, Mr. Remaklus?

12 MR. REMAKLUS: Yes, Your Honor.

13 THE COURT: And I assume her testimony about her
14 residence in the Nevada Penitentiary and the Idaho Penitentiary
15 were as a result of that conviction; is that correct?

16 MR. REMAKLUS: Yes, Your Honor.

17 THE COURT: Of course, our Idaho Statute, 18-301, is
18 broader than the constitutional double jeopardy provision.
19 Section 18-301 protects prosecution for the same act or omission
20 under any other statute. Double jeopardy, as I understand it,
21 bars a second prosecution for the same offense. Of course, I
22 can see there may be a possibility of a different offense
23 involved under certain testimony Miss Spaulding may give.

24 But, our statute refers to an act or omission and
25 not the same offense. Any comment on that, Mr. Robinson?

1 MR. ROBINSON: I will not and cannot represent to the
2 Court regarding the double jeopardy circumstances that may be
3 tuned to Miss Spaulding in regards to Arnold and Bradford and
4 her pleading guilty to accessory. Your Honor, there are many
5 other circumstances out-of-state that will come to light and,
6 basically, we are as interested -- I'm sure the Court is, that
7 Miss Spaulding has competent legal advice. All of this will
8 come into this matter even on cross-examination.

9 THE COURT: I'm sure we'll be able to delineate her
10 possible incrimination in connection with this case and other
11 cases, perhaps, as to which there hasn't been any proceedings
12 had. Right now I see little difficulty in perceiving that
13 she'll even be required to answer any questions on relevancy
14 and materiality grounds on any other -- any other offenses or
15 any out-of-state involvement. I have already indicated to
16 Counsel I'm not going to allow proof on those circumstances in
17 this case.

18 So, I don't see how I'm going to -- I won't let
19 the Prosecutor ask her any questions about those anyway.

20 MR. ROBINSON: Well, Your Honor, I'm sure the Court is
21 aware of the intent of the defense on rulings of the Court as
22 to materiality and relevancy on full disclosure and I'm sure
23 the Court is aware of that material covered in the polygraph
24 report wherein, basic information shows that Thomas Eugene Creech
25 did not commit the two murders in the State of Idaho on

1 Arnold and Bradford which will bear heavily upon the
2 materiality and relevancy of the total involvement as to why,
3 then, he did make a voluntary statement.

4 THE COURT: Well, I would just add for the record, that's
5 your statement, that's not mine. I don't particularly agree
6 with your statement. I've read the report and I'm not
7 particularly in agreement that that's what it says. It says
8 the operator had some question about his answers on three or
9 four questions, but that is a different statement than the way
10 you stated it, Mr. Robinson.

11 MR. ROBINSON: Yes, Your Honor.

12 THE COURT: Well, under the circumstances I will appoint
13 an attorney, a local attorney here, to consult with
14 Miss Spaulding about her testimony. I'm wondering, to
15 expedite the matter and not delay the trial unduly, are you
16 prepared to go ahead with other witnesses at this time?

17 MR. REMAKLUS: Yes, Your Honor.

18 THE COURT: This being Saturday I don't know what --
19 where is Miss Spaulding being housed right at this time during
20 the --

21 MR. ROBINSON: I understand the Kellogg jail.

22 THE COURT: Is that where you are being kept, at
23 Kellogg?

24 THE WITNESS: Yes.

25 MR. REMAKLUS: Yes, Your Honor.

1 THE COURT: Perhaps I could appoint an attorney that
2 lives in Kellogg, then, so it will be convenient to consult with
3 him.

4 Well, I'll allow Miss Spaulding to be withdrawn as
5 a witness. I'll take care of any further proceedings any
6 Counsel want to take at this time.

7 I want to make clear to Counsel that the only issue
8 I'm concerned about is possible self-incrimination because I
9 think that's the only objection she could make to testifying is
10 that her answer might tend to incriminate her.

11 THE WITNESS: Yeah.

12 THE COURT: And that's the only point I'm going to
13 appoint Counsel to consult with her about; is possible
14 self-incrimination.

15 THE WITNESS: Thank you.

16 THE COURT: You understand that, Miss Spaulding?

17 THE WITNESS: Yes.

18 THE COURT: All right. I'll permit Miss Spaulding to
19 step down and I will appoint counsel.

20 MR. REMAKLUS: Thank you, Your Honor.

21 THE COURT: I'll tell the attorney I appoint that you are
22 in the Kellogg jail so he can contact you there, Miss Spaulding.

23 THE WITNESS: Thank you.

24 MR. REMAKLUS: May I consult with co-counsel?

25 THE COURT: Are you ready to proceed and bring the jury

1 back at this time?

2 MR. REMAKLUS: I think we're ready to proceed,
3 Your Honor.

4 (Jury re-entered the courtroom.)

5 THE COURT: Let the record show the jurors are all
6 present.

7 I'll advise you, ladies and gentlemen, I have
8 allowed Miss Spaulding to step down as a witness temporarily and
9 ask the State to call another witness.

10 MR. REMAKLUS: Thank you.

11 MR. THOMAS: Officer Hill, please.

12

13 WILLIAM SHERMAN HILL,
14 a witness produced on behalf of the State, having been first
15 duly sworn, took the stand and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. THOMAS:

19 Q Officer Hill, would you tell the jury your name and
20 address, please?

21 A William Sherman Hill, 545 North Elmore, Glens Ferry,
22 Idaho.

23 Q You are employed as a police officer; is that
24 correct?

25 A Yes, sir.

1 Q Where do you work, Officer Hill?
2 A City Police Officer for the City of Glenns Ferry.
3 Q Glenns Ferry? That is in Idaho?
4 A Yes, sir.
5 Q How long have you been employed there?
6 A Approximately three years.
7 Q Were you employed with the Glenns Ferry Police
8 Department on the 8th of November, 1974?
9 A Yes, sir.
10 Q What kind of training and background have you had in
11 law enforcement work, Officer Hill?
12 A I've had on-the-job training and patrol procedures
13 and investigation, handling of complaints and training at the
14 Post Academy in Pocatello, Idaho.
15 Q Have you ever before come into contact with the
16 defendant in this case, Thomas Eugene Creech?
17 A Yes, sir.
18 Q Do you remember -- recognize him in the courtroom
19 today?
20 A Yes, sir.
21 Q Would you point him out, please.
22 A The person sitting to the right of defense counsel.
23 Q To defense counsel's right?
24 A Yes, sir.
25 Q Do you recognize him personally; having seen him

1 before?

2 A. Yes, sir.

3 MR. THOMAS: Let the record indicate that Mr. Hill has
4 identified the defendant, Your Honor.

5 THE COURT: Well, just to make the record clear in this
6 respect, could you describe the clothing he's wearing right now,
7 Mr. Hill?

8 THE WITNESS: Yes, sir. He's wearing a brown shirt with
9 brown and white checked pants.

10 THE COURT: Yes, the record may show that the witness
11 has identified the defendant.

12 Q. BY MR. THOMAS: Now, Officer Hill, would you state
13 to the jury when and what circumstances you came into contact
14 with the defendant on November 8, 1974?

15 A. Yes, sir. I was in Hanson's Cafe, this is between
16 2:00 and 2:15 in the morning on November the 8th.

17 Q. Is that in Glens Ferry?

18 A. Yes, sir. At that time I stopped in for a coffee
19 break; which is after checking the business district and I
20 observed two subjects coming to the cafe and order coffee. At
21 that point --

22 Q. Would you describe the two subjects, by the way?

23 A. Yes, sir. One subject was a male subject in his
24 early twenties. He had long hair of a light brown color, gold
25 wire glasses. The other subject was a female, approximately the

1 same age with long straight blonde hair and long dark maxi coat.

2 Q Had you seen either of those persons in this room
3 during this trial?

4 A Yes, sir, I have seen both of them.

5 Q Would you state when?

6 A I saw them yesterday and then the girl this morning.

7 Q When you say "the girl this morning" you were
8 referring to Miss Spaulding who just left the stand?

9 A Yes, sir.

10 Q She was one of the people you saw?

11 A She was -- yes, sir, she was the female subject.

12 Q And can you tell the jury who the other person was
13 that you saw?

14 A The other person was Mr. Rivers who testified
15 yesterday.

16 Q What happened next, if anything, Officer Hill?

17 A Next I noticed that the description that I received
18 prior on two subjects wanted up north in -- out of Valley County,
19 fit the description of these two subjects, Miss Spaulding and
20 Mr. Rivers.

21 Q What kind of information did you have from Valley
22 County?

23 A The description I received was a young male subject,
24 young white male subject approximately 20 years of age, long
25 dark hair, red beard and a pea coat.

1 The description of the female was a young white
2 female, long blonde hair and a dark maxi coat, approximately
3 20 years of age.

4 Q Was there any reason why you paid particular attention
5 to Miss Spaulding and Mr. Rivers when they came into the cafe?

6 A The cafe was empty at that time of night and they
7 were the only two people. They came in through the door and I
8 naturally observe people who are coming in the cafe that time of
9 night. The fact that they both fit the description that I
10 received earlier, the long blonde hair on the girl and dark
11 maxi coat and with Mr. Rivers it was the long straight hair
12 that he had and his general height and appearance of the two
13 subjects.

14 Q What description had you received earlier about the
15 manner in which the --

16 A That they were hitchhiking.

17 Q What description were you given as to what the
18 people you were looking for resembled?

19 A Young college couple, apparently college-age,
20 traveling.

21 Q Did the description you received mention blonde hair
22 and the maxi coat that you mentioned a moment ago?

23 A Yes, sir, it did mention the long dark maxi coat
24 and long blonde hair.

25 MR. THOMAS: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 Q BY MR. THOMAS: Officer Hill, I'm handing you here
3 what has been marked as State's Exhibit 24. Would you have a
4 look at that and tell me if that resembles the maxi coat you
5 are talking about?

6 A Yes, sir.

7 Q After you observed Mr. Rivers and Miss Spaulding
8 what did you do?

9 A At that time --

10 Q You can lay the coat over the rail.

11 A At -- I went to the phone in the back room of the
12 cafe and called the Elmore County Sheriff's office and requested
13 a backup unit to meet me in Glenns Ferry.

14 Q May I ask why you did that?

15 A This is procedure on anytime you have a suspect,
16 felony suspect to stop.

17 Q Why did you suspect there was a felony in this case?

18 A Because of the fact that the "twix" had mentioned --
19 the teletype that I -- that Mountain Home had given me the
20 information from over the radio had mentioned that these two
21 subjects were wanted in Valley County involved with a double
22 homicide.

23 Q Now, you say you called someone at that point for
24 backup?

25 A Yes, sir.

1 Q Who did you call?

2 A I called the dispatcher, Elmore County Sheriff's
3 office.

4 Q Is the dispatcher at the Elmore County Sheriff's
5 office in Glenns Ferry?

6 A This is in Mountain Home.

7 Q How far is that from Glenns Ferry?

8 A Twenty-six miles.

9 Q And what happened then?

10 A I was notified then that there was no available
11 County unit for backup to assist me and the stated -- the
12 dispatcher stated there was one State unit on and that the
13 State unit came back on the air hearing our conversation. I was
14 on the phone and he called the State unit and the State unit
15 replied that he was going over and that our State unit officer
16 in Glenns Ferry was much closer and could respond quicker. I
17 was advised to contact a resident State officer in Glenns Ferry.

18 Q Did you do so?

19 A I tried to contact that officer and he was -- I was
20 unable to contact him.

21 Q Then what did you do?

22 A At that point I telephoned Officer Menzik's house,
23 another officer in Glenns Ferry and advised him that I had two
24 subjects in the cafe that matched the description on the double
25 homicide up north, the subjects wanted for the double homicide

1 and asked him to meet me at Hanson's Cafe. He replied he would.

2 Q Did you then leave the cafe?

3 A I went back into the counter portion and sat back
4 down with my coffee and observed the other two subjects pick up
5 their --

6 Q That's Mr. Rivers?

7 A Mr. Rivers and Miss Spaulding, pick up their coffee
8 and pay for it, their coffee, and doughnut, whatever they had, and
9 then leave through the front door.

10 I allowed them to -- they turned to the right and
11 went back -- there are some big picture windows in the front, and
12 allowed them to get out of sight before I proceeded to my
13 patrol unit so I could observe if they got into a vehicle or
14 left or what manner of transportation they had at the time and
15 where they were going.

16 I observed that, got in my patrol car and I observed
17 a vehicle leaving the parking lot that was parked on the corner
18 by the phone booth. It backed out and left the parking lot,
19 pulled onto First Street and headed east out of town.

20 Q Was there any other vehicle present in the area at
21 that time?

22 A No, sir. We were the only two vehicles.

23 Q Would you describe the vehicle you saw leaving the
24 parking lot?

25 A Yes, sir. It was a white over blue Oldsmobile

1 Cutlass, it had out-of-state plates.

2 Q Do you remember what state?

3 A At that time I didn't. I couldn't read the plates
4 clear enough to determine which state it was.

5 Q Go on if you would and describe what happened next.

6 A At -- as I saw the vehicle turn and go east down
7 First Street and Officer Menzik hadn't arrived yet, I turned
8 and went west up First Street to Commercial Street; which is the
9 only street that gives access from South Glens Ferry to the
10 middle of town across the railroad tracks which he would have
11 had to come up to assist me. I observed a set of headlights
12 coming from the south on Commercial Street from the direction
13 Officer Menzik lives in and positioned my vehicle, my headlights
14 pointed towards him and flashed them off and on so, in case it
15 was him, he would -- hoping he would get the idea that I needed
16 him right now to hurry it up; at which time the vehicle that
17 was coming north on Commercial Street speeded up and met me at
18 the gas station -- or the Police Station and Office Menzik got
19 out and got in the patrol unit.

20 Q Officer Menzik was in the other vehicle?

21 A He was in his own personal car coming to the Police
22 Station to assist. He got in the patrol unit and at this time,
23 just prior to him arriving the vehicle, Mr. Rivers' car had
24 turned off -- went up the hill off the end of East First towards
25 I-80.

1 Officer Menzik got in the patrol car and we
2 proceeded to go in pursuit of the vehicle.

3 Q Was this the same car that you saw before?

4 A Yes, sir. I watched the taillights as they went
5 down around the corner while I was waiting for Officer Menzik to
6 get in the patrol car.

7 We went east down First Street and pursued the
8 vehicle. As we came around the corner headed up the hill towards
9 the intersection of the East Loop and I-80, I observed the
10 vehicle was crossing the canal. As we were accelerating -- well,
11 more rapidly, we lost the distance and as I approached the canal
12 the vehicle, Mr. Rivers' car, was stopping at the stop sign, had
13 his brake lights on, and I turned on the red and blue lights
14 and pulled in behind him at the stop sign where the East Loop
15 meets Interstate 80.

16 Mr. Rivers' vehicle then, after leaving the stop sign,
17 made a slow turn to the right and off the shoulder of the road
18 with me pulling the patrol unit in behind him.

19 At that time I observed the license plate was a
20 Maryland license plate and called that into the Elmore County
21 dispatcher, giving our location and requesting a records check
22 on the license plate at that time. Then Officer Menzik, I
23 released the shotgun for Officer Menzik and he stepped out the
24 right-front door of the patrol car with the shotgun directed at
25 the vehicle. After checking out with the Sheriff's office and

1 while I was getting the driver's door open the driver of the
2 vehicle opened his door and started back towards our patrol unit.

3 Q Now, who was that, please?

4 A This was Mr. Rivers and Officer Menzik directed
5 Mr. Rivers to stop where he was and put his hands on the roof
6 of the car and keep them in sight.

7 I then walked out into the lane of traffic and came
8 in behind Mr. Rivers. At that time is when I noticed that there
9 was another subject in the vehicle instead of just the two that
10 I saw in the cafe. As I reached Mr. Rivers and proceeded to
11 pat search him for weapons, Officer Menzik approached the right
12 side of Mr. Rivers' vehicle and ordered the other subjects in
13 the vehicle; which would have been Miss Spaulding and
14 Mr. Creech, to put their hands on the top of their head and not
15 make any moves.

16 He ordered them to step out of their vehicle slowly
17 and put their hands on the roof of the car and I finished my
18 pat search with Mr. Rivers and asked for identification.

19 Q But, you've referred to a "pat search". Would you
20 explain to the jury what you mean by that?

21 A This is just a patting of the -- running the hands
22 over the outer clothing, checking for bulk objects; anything
23 that could be a weapon. We don't go into the pockets or
24 anything.

25 Q Were any weapons found during the pat search?

1 A. Not on Mr. Rivers, no, sir.

2 After completing my pat search of Mr. Rivers I asked
3 for identification and he gave me his driver's license. I
4 brought him around and put him on the trunk of the car with his
5 hands on the trunk of the car and his legs spread out so he
6 couldn't move. Then, I proceeded on over and pat searched
7 Mr. Creech and I did notice that he had a pocketknife in his
8 pocket. I did remove this and then pat searched Miss Spaulding
9 and found no weapons other than the pocketknife on Mr. Creech.

10 I asked Mr. Creech for his identification, he gave
11 me a driver's license identifying him as one Joe Carl Adams.

12 Q. Mr. Creech gave you this driver's license?

13 A. Yes, sir.

14 Q. And did it have a photo on it?

15 A. Yes, sir.

16 Q. Was it Mr. Creech's photo?

17 A. At the time, looking at it out there in the
18 intersection with the varied light, I determined -- well, to me
19 it was Mr. Creech at the time. I did not notice any difference
20 in the picture and I asked Miss Spaulding for identification.
21 She stated she had none.

22 Q. Was this name you referred to, Joe Carl Adams, on
23 the driver's license?

24 A. Yes, sir.

25 Q. I see. Proceed, if you will.

1 A. I then -- as I said, Miss Spaulding stated she had
2 no identification. At that time Officer Menzik advised the
3 subjects that they were under arrest, we took the three of them
4 back to the patrol car.

5 Q. May I interrupt you here just a second --

6 A. Yes, sir.

7 Q. -- and ask you to tell us, or tell the jury, whether
8 you heard what Officer Menzik said with respect to the subjects
9 being under arrest?

10 A. Yes, sir, I did hear that.

11 Q. Did he state why they were under arrest?

12 A. Stated that they were under arrest for murder.

13 Q. What happened next?

14 A. We then took the three of them back to the patrol
15 car and put them in the back seat. I advised all three of them
16 to keep their hands up on the screen which separates the front
17 part from the rear and keep their hands in view. I then called
18 the Mountain Home -- or Elmore County Sheriff's office in
19 Mountain Home and gave them the information of the identification
20 of Mr. Rivers and Mr. Creech and asked -- and the information
21 that Miss Spaulding gave me.

22 Q. When you said the identification of Mr. Creech, are
23 you referring to the identification you received from him that
24 said "Joe Carl Adams" on it?

25 A. Yes, sir, and Joe Carl Adams plus verbal information

1 that Miss Spaulding gave us.

2 I requested that they run a records check on these
3 and find out if there was any wants or warrants out on them.

4 After doing that I then advised all three subjects
5 of their rights under the Miranda Warning and they acknowledged
6 positively that they understood their rights under the warning.

7 Q Now, would you refer to the Miranda Warnings. Would
8 you explain what that is and what you did about giving those
9 rights?

10 A Yes, sir. That is the rights under the
11 Constitution of a person against violations of certain rights.
12 This was on a Miranda Warning card which I read to them.

13 Q You have a copy of that card with you?

14 A I have a copy of the Miranda Warning, not the
15 specific card.

16 Q Is it the same as the one you read at that time?

17 A Yes, sir, it is the same warning and everything.

18 Q Would you read that to the jury, Officer Hill?

19 A "You have the right to remain silent, anything you
20 say can and will be used against you in a court of law. You
21 have the right to talk to a lawyer and have him present while
22 you are being questioned. If you cannot afford a lawyer one
23 will be appointed to represent you before any questions if you
24 wish. You can decide at any time to exercise these rights and
25 not answer any questions or make any statements.

1 "Do you understand each of these rights I have
2 explained to you?

3 "Having these rights in mind, do you wish to talk to
4 us now?"

5 I asked -- when I asked the question "Do you
6 understand each of the rights I have explained to you" I was
7 acknowledged from all three subjects.

8 Q Each of them simultaneously gave you an affirmative
9 acknowledgement?

10 A I turned around and I -- Miss Spaulding was
11 hesitant on her reply and then she -- I asked her and she
12 stated she did understand her rights.

13 Q Did Mr. Creech also say that?

14 A Yes.

15 Q Were any questions asked, apart from the questions
16 about identity before these rights were read to the suspects?

17 A No, sir.

18 Q What happened next?

19 A At that point I got back out of the patrol unit and
20 taking Mr. Rivers out the left-rear door I got him out and had
21 explained to him the circumstances surrounding the reason of
22 why we stopped his vehicle; that there had been a homicide,
23 double homicide committed up north and the description fit the
24 subjects and that he could possibly be considered an accomplice
25 and under these circumstances he would be treated as such until

1 proven otherwise. He stated he understood this and would go
2 along in the manner that we requested and then he got back in his
3 vehicle -- or put him back in the patrol car.

4 After that Officer Menzik asked me -- Rivers if he
5 would give him permission to look in his car and Mr. Rivers stated
6 that he had no objections to this. Officer Menzik went up to
7 Mr. Rivers' car and then came back to the patrol car with a
8 black purse.

9 Q Now, Mr. Hill, I'm going to display to you State's
10 Exhibit No. 25. Does that appear to be the black purse that
11 you are speaking about?

12 A Yes, sir.

13 Q Go on, please.

14 A Officer Menzik returned to the patrol car with this
15 black purse and held it up in view of the three subjects in the
16 back seat and asked them who claimed it, who it belonged to.
17 They made no reply as to who the owner of the purse was.

18 He then put it down in the front seat of the vehicle
19 and unzipped it. Lying on the top of the purse was an automatic
20 pistol in a holster.

21 Q Well, like now, Officer Hill, to show you State's
22 Exhibit No. 22 and ask if you've seen that before?

23 A Yes, sir.

24 Q And what is that?

25 A This is a revolver, .22 caliber revolver that was

1 taken from the purse, the black purse.

2 Q Is that a revolver or --

3 A Well, it's an automatic, instead of revolver.

4 Q Does that appear to be more -- resemble the weapon
5 you saw then at that time?

6 A Yes, sir.

7 Q Go on if you would and tell us what then happened.

8 A At that point Officer Menzik held it up, again with
9 the purse tilted so they could observe the gun in the holster.

10 Q Was the holster there at the time?

11 A Yes, sir. It was lying right in the top of the
12 purse like this (indicating). He held it up to their view so
13 that they could see it and again asked them who the owner was.
14 There was no acknowledgement from any of them.

15 At that time he put the gun and the purse back
16 down on the front floor of the patrol car and I got out and he
17 asked me how good I had pat searched all three of the subjects
18 and I told him that the only thing I observed was a pocketknife
19 in Creech's pocket. So, he, at that time, took Mr. Creech and
20 Miss Spaulding back out of the patrol car. He pat searched them
21 again and then we handcuffed Mr. Creech and Miss Spaulding and
22 put them back in the patrol car.

23 Officer Menzik asked Mr. Rivers if he would give him
24 permission to take his -- Mr. Rivers' car back into Glenns Ferry
25 to the Police Station. Mr. Rivers stated that he had driven his

1 car quite a few miles and didn't particularly want anybody
2 driving it and Officer Menzik then informed Mr. Rivers that he
3 could drive it in or else we'd have to have the wrecker come
4 out and tow it in for purposes of impounding it as for the
5 seriousness of the crime.

6 Mr. Rivers then gave him permission to drive the car
7 back in.

8 I was instructed to follow Officer Menzik, he would
9 proceed me into town; I would follow him. We made a turn back
10 into the exit coming into Glenns Ferry. At that time I radioed
11 to Elmore County Sheriff's office to have them notify
12 Detective Jack Freeman and have him meet me at the Police Station
13 in Glenns Ferry for the purpose of investigating this -- further
14 investigation of it.

15 Q Well, did some of the suspects get in Officer Menzik's
16 vehicle? Were they placed there?

17 A I kept all three of them in the patrol car going into
18 town, all three in the back seat.

19 Q Into Glenns Ferry?

20 A Yes, sir.

21 Q And what happened then and where did you go?

22 A We went to the Police Station and upon arriving at
23 the Police Station we took all three subjects out into the office
24 and had them set there and -- then Officer Menzik also brought
25 the purse in with the gun in it.

1 At that time Officer Menzik -- see, I laid the
2 identification down on the desk and called Mountain Home and
3 requested a -- no, I called Mountain Home and then they
4 notified me that Officer -- Detective Freeman had been advised
5 that I requested him to come to Glenns Ferry and he was on his
6 way down.

7 At that time Officer Menzik picked up the
8 Joe Carl Adams driver's license off the desk where I had it
9 laying and was looking at it. Then he turned around and stated
10 to me that the picture did not match Mr. Creech in appearance.
11 At that point I asked Mr. Creech if that was his driver's
12 license. He stated it was and I asked him what his Social
13 Security number was. He replied that it wasn't his I.D. and it
14 wasn't his driver's license.

15 Q Did he then tell you what his name was?

16 A He then asked me -- I then asked him what his name
17 was and he said it was Tommy Turner.

18 Q Mr. Creech said that?

19 A Yes, sir. I says "You are certain this time"?

20 He says "Yes". I says "This one is your real name,
21 then"?

22 He says "Yes, sir".

23 At that point I contacted Mountain Home again, he
24 gave me a different date of birth -- if I remember correctly,
25 and different Social Security number and a different address.

1 I then contacted Elmore County Sheriff's office and requested a
2 records check upon a new name and information that I had
3 received from him.

4 Q The name of Tommy Turner?

5 A Yes, sir. And we then -- Mr. Menzik then picked up
6 the revolver and removed the clip from the handle, observing
7 that it was fully loaded, and then he ejected one shell out of
8 the chamber of the automatic.

9 Then, I think it was at that point that we had the
10 three subjects empty their pockets.

11 Mr. Creech and Miss Spaulding and Mr. Rivers put
12 their property on the desk. Then Mr. Creech had more I.D. in
13 his pocket stating that he was Joe Carl Adams and I think there
14 was about five pieces altogether. I asked him where he had
15 gotten this identification from and he stated that he had
16 gotten it from a man in Boise. I asked him who it was in Boise
17 and he stated it was Jim Marsh.

18 I asked him where this Jim Marsh lived and he told
19 me he lived -- he gave me the name of the street in Boise in a
20 trailer house just off this street and then I observed that --
21 and the property was emptied from Mr. Creech's pants that
22 there were approximately four more .22 shells, I think, in his
23 pockets.

24 Q Did you ask him about -- or in telling you that he
25 was Tommy Turner, did you ask him what his address was at that

1 time?

2 A. Yes, sir.

3 Q. Did he give you an address?

4 A. He gave me an address of Route 1, Quicksand,
5 Oklahoma.

6 Q. Then what happened?

7 A. Then it was about that approximate time that
8 Detective Freeman arrived from Mountain Home and we explained,
9 you know, more or less ran down to him what had occurred so far,
10 what information we had. He came in and at that time I was on
11 the phone -- the phone rang and I was on the phone to -- talking
12 to the Valley County Sheriff's office and --

13 Q. Now, let me just interrupt at that point and ask you
14 this question. Up to this point, from the time of the arrest
15 had these three subjects been together?

16 A. Yes, sir.

17 Q. Had they been talking together?

18 A. Yes, sir.

19 Q. And for how long a period was that?

20 A. This is approximately -- we were there for better
21 than an hour, I know.

22 Q. Getting from Glenns Ferry to Mountain Home?

23 A. From the time of the arrest through the procedure
24 at Glenns Ferry Police Station and then the trip to
25 Mountain Home. This would constitute in the area of

1 approximately two hours or thereabouts.

2 Q And did you hear any of the conversations between
3 Mr. Creech and Miss Spaulding?

4 A No, sir.

5 Q You don't know what they might have been talking
6 about?

7 A I don't know. I was busy with the phone and this
8 other at the time. I did know that they had -- were talking
9 to each other but I couldn't hear anything particularly.

10 Q Now, let me see if I can get it straight in my mind.
11 Were you already at Mountain Home when Detective Freeman came in?

12 A No, sir, in Glenns Ferry at the Police Station.

13 Q I see. Well, then what happened?

14 A Then at that point Detective Freeman again advised
15 the three subjects of their rights on the written notification
16 of rights form.

17 Q Is that the same kind of form that you used?

18 A Yes, sir, it is the same form.

19 Q Did you hear Detective Freeman reading the suspects
20 their rights?

21 A Yes, sir.

22 Q And did he say the same thing as you read off your
23 card to the jury a moment ago?

24 A Yes, sir.

25 Q What, if anything, did you observe the defendants --

1 or the suspects acknowledge?

2 A. That all -- I heard him read the rights to them and
3 then handed the form to them. I observed them signing their
4 signatures to them.

5 Q. Go on if you would and describe what then next
6 happened?

7 A. At that point I informed -- at that point, while he
8 was going through the rights with them, he also produced a
9 consent to search form for Mr. Rivers and read that to
10 Mr. Rivers, getting permission to have his vehicle searched.

11 Mr. Rivers signed the consent to search form, gave
12 him permission, Officer Menzik went out to the car and searched
13 the vehicle. Then I advised -- or Detective Freeman that
14 Jim Maxwell from Valley County wanted to talk to him on the
15 phone. He took the phone and Mr. Menzik came back in with a
16 dark blue coat and requested who the coat belonged to and
17 Mr. Creech identified it as his coat.

18 Then, the -- Detective Freeman asked us to check the
19 clothing for marks or stains of any sort. We -- or Officer
20 Menzik and myself went over the dark blue maxi coat here and
21 observed --

22 Q. Did you see here -- is that the dark blue maxi coat
23 that you --

24 A. Yes, the one you handed me. We observed that there
25 were some darker stains at the bottom of the coat along the tail

1 of it.

2 Q What did these stains resemble?

3 A At the time it was just a dark substance, darker
4 than the material itself. We took Mr. Creech's Levi jacket off
5 and observed stains on it, on the left sleeve, wrist -- or left
6 cuff and sleeve and some on the back in this area back here
7 (indicating). These resembled a kind of a rust color.

8 Mr. Creech stated that at that time --

9 Q How do you know, by the way, that those were
10 Mr. Creech's clothes and jackets?

11 A Well, Mr. Creech was wearing the coat that we took
12 off him and identified the other one as his jacket also.

13 Q Now, this is State's Exhibit 47. Would you check
14 inside there and determine whether the jackets you are speaking
15 about are in that bag?

16 A Yes, sir, this is the one that Mr. -- Officer Menzik
17 brought into the Police Station and Mr. Creech identified as
18 his jacket.

19 Q Do you have, at least a general recollection of
20 where you saw any stains or spots on there?

21 A Yes, sir. The stains were on -- if I remember right,
22 it was the left cover -- or portion here (indicating) and left
23 shoulder area and just down the back.

24 Q Now, is there a "Q" number somewhere on the jacket
25 that you are holding?

1 A. Yes, sir, there is.

2 Q. What is that?

3 A. There's a Q-31.

4 Q. Q-31? Would you examine the other jacket in the bag,
5 tell us about that. Is there a "Q" number on that, first of all?

6 A. Q-30.

7 Q. Q-30?

8 A. Yes, sir.

9 Q. Is that the other jacket that you were speaking
10 about?

11 A. Yes, sir.

12 Q. And do you have any general, or specific,
13 recollection of where you observed the stains on that jacket?

14 A. Yes, sir. The stains that we observed were on this
15 cuff and left sleeve area then, again, on the back in the lower
16 back portion here (indicating).

17 Q. I see. You can return those to the bag if you
18 would.

19 A. (Witness complied.)

20 Q. Which one, by the way, Officer Hill, did you say
21 Mr. Creech was wearing?

22 A. The Levi jacket.

23 Q. The Levi jacket?

24 A. Yes, sir.

25 Q. I believe that was Q-30; wasn't it?

1 A To my recollection, yes, sir, it was Q-30.

2 Q Now, Officer Hill, if you'd go on and describe
3 what you found, or what happened after you observed the stains.

4 A After that -- well, we were checking the Levi jacket,
5 Mr. Creech stated that --

6 THE COURT: Just a minute, before you answer that.

7 I want to be assured in the questioning that there
8 won't be any statements brought out that we haven't talked
9 about.

10 MR. THOMAS: I have no reason to anticipate that,
11 Your Honor.

12 THE COURT: Well, I want it stopped if there is.

13 MR. THOMAS: Yes, Your Honor.

14 Q BY MR. THOMAS: What did you do with these
15 materials, Officer Hill, after you observed them?

16 A At that point we put the jackets back down and
17 then checked the purse, as it was quite bulky and I noticed
18 there was some clothing in it. We took out a T-shirt and a
19 pair of Levis. There was stains on the Levis in the seat
20 portion of the Levis.

21 Q Did you handle, yourself, the marking of this
22 material for evidence; or did somebody else do that?

23 A No, sir, this material was marked by
24 Detective Freeman in Mountain Home at the Sheriff's office.

25 Q Is that Jack Freeman?

1 A. Yes, sir.

2 Q. You didn't do that yourself?

3 A. No, sir.

4 Q. Where were the suspects taken after you got to
5 Mountain Home?

6 A. Okay. We rode to Mountain Home, we took the
7 suspects to the County Commissioners' Room, just up the stairs
8 from the Elmore County Sheriff's office itself. This was for
9 the purpose of seclusion, to keep people from walking in and
10 out on us all the time.

11 Q. Maybe I didn't ask you this. How did you get to
12 Mountain Home with Mr. Creech and Miss Spaulding and
13 Mr. Rivers?

14 A. We went out and put the clothing and other material
15 that we had in the office that we had checked over, we put that
16 into the trunk of Detective Freeman's car and Officer Menzik got
17 in the car with Detective Freeman and Miss Spaulding and
18 Mr. Creech. Then Detective Freeman's car -- I was to follow in
19 Mr. Rivers' car with Mr. Rivers and if there was any indication
20 of trouble we would flip his lights with me behind him to assist
21 in case there was any trouble.

22 We followed the Deputy -- or Detective Freeman's
23 car on into Mountain Home where we went into the County
24 Commissioners' Room.

25 We took the clothing and three subjects up at once.

1 Q Now, did anybody else become involved in this
2 investigation after you got to Mountain Home?

3 A The only other person that was in there was the
4 matron from the Mountain Home Police Department which -- who did
5 a complete search of Miss Spaulding. Then we were met in
6 Mountain Home by Valley County Deputy Sheriff Jim Maxwell and
7 Idaho State Investigator Woodall.

8 Q Woodall?

9 A Yes, sir.

10 THE COURT: We will take a ten-minute recess at this
11 time.

12 If you will remember the admonition, ladies and
13 gentlemen, don't discuss the case and keep your minds open.

14 (Recess taken.)

15 (During the recess State's Exhibits 55 and 56 were
16 marked for identification.)

17 THE COURT: Show the jurors are all present.

18 Q BY MR. THOMAS: Mr. Hill, if I may go back for just
19 a moment I don't think I fully explored with you the search of
20 the purse that you were describing awhile back.

21 Do you know what came out of that? What was found
22 inside?

23 A Basically, yes, sir.

24 Q What was that?

25 A This was, as I described before, the pistol, T-shirt,

1 the Levis. There was two boxes of .22 ammo, partial pack of
2 Cool filter cigarettes.

3 Q What kind of ammunition was the .22 ammunition;
4 do you know?

5 A Not offhand, other than I think it was a -- different
6 than what he had in his pocket, was about the only thing.

7 Q I'm handing you State's Exhibit 25-A. Does that
8 appear to be similar to the ammunition, or like it?

9 A Yes, sir.

10 Q How long were Mr. Rivers, Miss Spaulding and
11 Mr. Creech in the courthouse at Mountain Home on the evening that
12 you are describing?

13 A Miss Spaulding was there for the full length of
14 time that she was -- until she was taken to Valley County -- or
15 until they left with Deputy Maxwell and --

16 Q Who took them? You've mentioned Deputy Maxwell.
17 Was there anybody else that transported Mr. Creech and
18 Miss Spaulding to Valley County?

19 A I think it was State Investigator Woodall.

20 Q I'm going to hand you here a group of documents
21 marked for identification as State's Exhibits 55 and 56. They
22 are stapled together. I only want you to look at Exhibit 56
23 for identification and -- at the moment, and ask you to tell the
24 jury if you recognize that document.

25 THE COURT: Just a minute. Do you have a record of these

1 being marked?

2 (Brief delay.)

3 THE COURT: Go ahead.

4 THE WITNESS: Yes, sir.

5 Q BY MR. THOMAS: There is a signature on there that
6 says "Tom Creech". Did you see that attached?

7 A Yes, sir.

8 Q And did you see who signed that name on the
9 document?

10 A Yes, sir.

11 Q And who was it?

12 A It was defendant, Mr. Creech.

13 Q Did you sign the several pages of that document
14 yourself?

15 A Yes, sir.

16 Q And did anybody else sign it?

17 A Yes, sir.

18 Q Who was that?

19 A Wesley Woodall.

20 Q Mr. Woodall sign in your presence?

21 A Yes, sir.

22 Q Did Mr. Creech sign in your presence?

23 A Yes, sir.

24 Q There are several initials which appear throughout
25 the document. Were those placed on the document in your

1 presence?

2 A. Yes, sir.

3 Q. When was -- well, let me ask you this: Who put
4 the initials on?

5 A. This was Thomas Creech.

6 Q. When did Mr. Creech sign and initial the document?
7 Do you remember what time of the day that was?

8 A. It was in the -- I think this was before noon on
9 the same day.

10 Q. Is there a time marked on the document?

11 A. Yes, sir.

12 Q. The time of signature?

13 A. According to this it was in the afternoon of --
14 4:00 p.m. is when this was signed.

15 Q. Is that in accord with your recollection of the time?

16 A. I was back and forth between the two of them and all
17 I know is that it would have been after Miss Spaulding was
18 taken for arraignment. It would have been about that time, yes,
19 sir.

20 MR. ROBINSON: Your Honor, would you inquire of the
21 alternate juror as to whether or not she's hearing all of the
22 witnesses?

23 THE COURT: Are you able to hear all right?

24 JUROR: Not clearly, no.

25 THE COURT: Speak up a little, then.

1 THE WITNESS: Yes, sir.

2 Q BY MR. THOMAS: Could you describe Mr. Creech's
3 demeanor at the time that he signed and initialed that document?

4 A Yes, sir.

5 Q Speak up, please. I can't hear you very --

6 A Yes, sir. At the time he was just making the
7 statements he appeared fairly normal to me.

8 MR. THOMAS: No further questions, Your Honor.

9

10 CROSS EXAMINATION

11 BY MR. ROBINSON:

12 Q Officer Hill, you completed a total written report,
13 official report; did you not, of the occurrences shortly after
14 your involvement in this case of November 8th, 1974?

15 A Yes, sir.

16 Q How soon after that date did you complete your
17 official report?

18 A This was done over the next two days after that.

19 Q Would you speak up, please.

20 A Yes, sir. This was done over the next two days
21 after that.

22 Q So, you completed that report on November the 9th
23 and 10th?

24 A To my recollection that's when it was, yes, sir.

25 Q All right. Now, your recollection tells you what

1 time of the morning, morning of November 8th did apprehension
2 take place?

3 A. This would have been approximately 2:42 a.m.

4 Q. And what is your recollection of your arriving at the
5 Glenns Ferry Police Station?

6 A. It would have been approximately 15 minutes
7 thereafter.

8 Q. All right. Now, before further -- Officer Hill, do
9 you feel that you could refresh your memory if you had your
10 report handy?

11 A. I possibly could, yes, sir.

12 Q. Do you happen to have that close to you?

13 A. It's in the room.

14 Q. It's in the room?

15 A. Yes, sir.

16 MR. ROBINSON: Your Honor, may he get his official report?

17 THE COURT: If you want to get it, go ahead.

18 (Brief delay.)

19 Q. BY MR. ROBINSON: All right. How long were you at
20 Glenns Ferry Police Department?

21 A. Until sometime after 4:00, probably.

22 Q. I'm sorry.

23 A. I'd say approximately -- around four, a little after.

24 Q. About 4:15; is that what you reported?

25 A. Approximately that time, I'd say.

1 Q All right. And then you rode in the same car to
2 transport the three subjects to Mountain Home; is that correct --
3 A No, sir.
4 Q -- or incorrect?
5 A I was with Mr. Rivers in his vehicle.
6 Q Oh, all right. And he drove or you drove?
7 A I drove the vehicle.
8 Q All right. And how long did it take you to get from
9 Glenns Ferry to Mountain Home?
10 A It's approximately a half hour, 20 minutes to half
11 hour.
12 Q And did you then go directly to the Commissioners'
13 office on the second floor of the Elmore County Courthouse?
14 A Yes, sir.
15 Q And this was with all three subjects?
16 A Yes, sir.
17 Q And the personal property that you had confiscated;
18 is that correct?
19 A Yes, sir.
20 Q And how long did you and all three of the subjects,
21 along with Officer Freeman, or Detective Freeman, remain there
22 in the Commissioners' office?
23 A After we arrived in the room Detective Freeman
24 requested myself and Officer Menzik to escort Mr. Rivers and
25 Miss Spaulding downstairs to the Sheriff's office.

1 Q And did you do so?
2 A Yes, sir.
3 Q And from that point on were the subjects separated?
4 A No, sir.
5 Q Explain to me, Officer Hill, what separation took
6 place?
7 A When separation took place?
8 Q Yes, and what separation.
9 A Oh --
10 Q Who was separated from who?
11 A At that point Mr. Creech was left upstairs with
12 Detective Freeman and then I went back upstairs. As he finished
13 with Mr. Creech I took Mr. Creech downstairs and brought
14 Miss Spaulding back upstairs, if I remember right.
15 Q All right. How long was spent in interrogation of
16 Mr. Creech before you made this exchange?
17 A Oh, approximately 15, 20 minutes.
18 Q All right. Then you took Carol Spaulding back up
19 to the Commissioners' Room?
20 A Yes, sir.
21 Q And took Tom Creech --
22 A Downstairs.
23 Q In the basement area of the Sheriff's office?
24 A Him and Mr. Rivers were together downstairs.
25 Q And then how long was Carol Spaulding interrogated?

1 A. Approximately 15, 20 minutes, half hour.
2 Q. Were you present during that interrogation?
3 A. Yes, sir, I was in and out of the room. I think
4 once there --
5 Q. And then what happened?
6 A. Then I was directed to take Miss Spaulding back
7 downstairs and return Mr. Creech upstairs; which I did.
8 Q. Do you know what time of the day it was then?
9 A. I'd say this would have been approximately around
10 7:00.
11 Q. All right. And then was Tom Creech again questioned
12 and interrogated?
13 A. Yes, sir.
14 Q. For what period of time?
15 A. I think at this point he was interrogated for
16 approximately a half hour.
17 Q. Were you present?
18 A. Yes, sir.
19 Q. Who else was present?
20 A. Detective Freeman and I think Sheriff Earl Winters
21 came into the room at one point and left.
22 Q. All right. Was anyone else?
23 A. Not to my recollection.
24 Q. And you say that session was how long?
25 A. This would have been approximately a half hour, 45

1 minutes; something like this.

2 Q So, we are at 7:30 a.m. to 7:45 a.m.?

3 A Something like this, yes, sir.

4 Q Then what happened?

5 A Then during this time I was -- went down and got
6 a pair of coveralls for Mr. Creech and we did a complete strip
7 search and removed his clothing and put the coveralls on him and
8 then I was instructed to transport him to the Mountain Home
9 Police Department and return with a police matron to search
10 Miss Spaulding.

11 Q And did you do so?

12 A Yes, sir.

13 Q What time did you arrive back to the Elmore County
14 Courthouse?

15 A It took approximately ten minutes to go over there
16 and back, probably.

17 Q And did you bring the police matron with you?

18 A Yes, sir.

19 Q And where was Tom Creech left?

20 A I left him in a cell in the Police Department.

21 Q All right. And then what happened?

22 A And then the police matron went in and searched
23 Miss Spaulding and gave me her belongings. I took those back
24 upstairs to Detective Freeman.

25 Q All right. And during this period of time no one

1 was being questioned or interrogated?

2 A. No, sir, not to my knowledge. There wasn't anybody
3 being questioned.

4 Q. How about Mr. Rivers?

5 A. Mr. Rivers was brought up after I took Miss Spaulding's
6 clothing up to her, if I remember right.

7 Q. And how long was Miss -- Mr. Rivers in a session of
8 questioning?

9 A. This would have been approximately the same period
10 of time for the others.

11 Q. Half hour, 45 minutes?

12 A. Yes, sir.

13 Q. And by whom was he questioned?

14 A. By Detective Freeman.

15 Q. And then what happened?

16 A. Then he gave us a written statement.

17 Q. Who gave who a written statement?

18 A. He gave a written statement to Detective Freeman.

19 Q. I'm sorry, Officer Hill, I'm having difficulty
20 keeping your voice up where I can --

21 A. He gave a written statement to Detective Freeman.

22 Q. Who is "he"?

23 A. Mr. Rivers.

24 Q. All right. Then what happened?

25 A. At that point I think we broke for breakfast, went --

1 took Mr. Rivers and Officer Menzik, Detective Freeman,
2 Earl Winters and myself all went over to breakfast.

3 Q At the El Rancho?

4 A Yes, sir.

5 Q That's in Mountain Home?

6 A Yes, sir.

7 Q And did the other police officers from Valley
8 County, Officer Maxwell and Wess Woodall from the State join you
9 at that breakfast?

10 A Yes, sir.

11 Q Approximately what time was that?

12 A That would have been approximately between 9:00,
13 9:30, something like this.

14 Q During this period of time was Carol being held at
15 the Sheriff's office in the Elmore County Courthouse?

16 A The last I saw her she was in a cell downstairs in
17 the Sheriff's office.

18 Q And Tom Creech was over at the Mountain Home Police
19 Department in a cell?

20 A Yes, sir.

21 Q When was the next questioning period started?

22 A Okay. We went back to the Elmore County Sheriff's
23 office and upon arrival we took Miss Spaulding upstairs -- before
24 we went to breakfast we took all the property to the jury room
: 25 where I had it locked in and that's where we went when we came

1 back to the jury room, where the property was at that time.

2 Q And the property you are speaking about is all of
3 this in plastic bags save and except for the blanket and the
4 sleeping bag?

5 A Yes, sir. It was everything that we had from our
6 stop in Glenns Ferry.

7 Q All right. And what time did the continued
8 interrogation, or questioning session with Carol Spaulding start?

9 A This would have been approximately, say, around
10 10:00, 10:30. It was after we came back from breakfast.

11 Q All right. And how long did that last?

12 A That would have been an hour, probably.

13 Q Were you present during that session?

14 A Yes, sir.

15 Q Would you describe to the jury the mannerisms and
16 characteristics of Carol Spaulding during that period of time?

17 A Yes, sir. When we first were seated she had set in
18 the chair, she had her feet up in a chair in front of her, folded
19 up in front of her and she repeatedly kept wanting cigarettes
20 and asking for Tom all the time. Every time we asked her a
21 question she would seem to ignore the question and stating that
22 she wouldn't say anything until we brought Tom to her, until
23 she could see Tom.

24 Q Officer Hill, at this time I would assume she was
25 dressed in some prison, or inmate coveralls or something of

1 this nature?

2 A Yes, sir, she had blue coveralls on.

3 Q Pardon?

4 A I think she had blue coveralls on then.

5 Q They were property of the Elmore County Sheriff's
6 office?

7 A Yes, sir.

8 Q Since her other belongings had been taken by the
9 matron?

10 A Yes, sir.

11 Q All right. Did she use any profanity?

12 A Yes, sir.

13 Q Such as what?

14 A One time she called us "no good sons of bitches"
15 because we wouldn't let Tom come and see her. She told us that
16 we were lying to her trying to trick her. Her specific words --
17 only one I can remember for certain was that she kept calling us
18 "no good sons of bitches" because we wouldn't let Tom see her.

19 Q You reported other language that she used in your
20 official report; didn't you?

21 A That's possible I have it in my report.

22 Q And this is terminology you'd rather not testify
23 and state here in court yourself, I assume?

24 A Well, it would be up to the Court if they wanted to
25 hear it. All I know, I don't remember for sure in my mind what

1 she said.

2 Q All right.

3 A Without referring to my notes.

4 Q Well, Officer Hill, I don't want to embarrass you
5 and I'm not going to press the point.

6 During this entire period of time that you were with
7 Carol, both downstairs and upstairs, did she use this profanity
8 to a great extent?

9 A Oh, yes.

10 Q Repeatedly?

11 A Every time I went downstairs I could hear it and
12 when I came upstairs she would go for a time without saying
13 anything foul and then all of a sudden she'd just snap out with
14 some stuff after awhile for no reason at all. It seemed like
15 it was, basically, because we wouldn't let her have a cigarette
16 and because we wouldn't let her see Tom is when she started on
17 this profanity.

18 Q Officer Hill, how long have you been a police
19 officer?

20 A Up to the present it's -- September the 9th was
21 three years.

22 Q All right. Now, prior to this occasion on the
23 8th day of November, 1974, have you ever seen anyone spaced out
24 on drugs?

25 A I have on a couple of occasions.

1 Q Do you have an opinion as to whether or not, during
2 this period of time that you observed Carol Spaulding, whether
3 or not she was, or was not, spaced out on drugs?

4 A I couldn't say that she was under the influence of
5 drugs or not. She did appear abnormal, that was about it.

6 Q Beg your pardon?

7 A She appeared to be other than a normal person would
8 be under -- being questioned. She was under -- she acted like
9 she was under a strain, really.

10 Q When in this period of time did she start acting
11 that way? While you were still at Glenns Ferry Police
12 Department or after that?

13 A Well, at the Police Department she was just acting
14 scared. She -- when I directed her to put her hands on the
15 screen I had to repeat that to her to keep her hands up there.
16 Then, that was the only indication I had that -- down there,
17 that she was acting scared and when we got back up to
18 Mountain Home and had her in the room in there, up to that
19 point I hadn't heard anything out of her as far as any foul or
20 vulgar languages. It was when we were interrogating her with
21 Maxwell and Woodall in the room that -- when she first went in
22 and right after we went in there, just after we started the
23 questioning she requested to see Tom and one of the other two --
24 Maxwell or Woodall stated that Tom was -- you know, being over
25 in the PD right now being held. She started in on it at that

1 point using the cussing and swearing at us. Then she would
2 fairly well calm down and answer a few questions and then she
3 would start in on wanting a cigarette or wanting to see Tom again.

4 Q And was her reaction one of profanity when she was
5 refused cigarettes and refused the presence of Tom?

6 A Yes, sir.

7 Q During that hour session was any statement taken of
8 Carol Spaulding?

9 A There were notes taken.

10 Q Was the session being taped?

11 A I remember seeing a tape recorder but I don't know
12 whether it was on or not.

13 Q Have you since that date been made aware as to
14 whether or not there was a Cassette or other type of tape made
15 of those interrogation sessions?

16 A Not to my knowledge.

17 Q All right. Then from your testimony the session of
18 interrogation on Carol Spaulding ended somewhere around 11:00
19 a.m. on the 8th day of November, 1974?

20 A That would be approximately, yes, sir.

21 Q Where was she then taken?

22 A To my knowledge she was taken back down to the
23 same cell she was in prior -- when we took her out of it to
24 bring her upstairs.

25 Q All right. Was she interrogated any further in

1 Mountain Home during the balance of that day?

2 A. I wouldn't know. I had no further connection with
3 her that day.

4 Q. You did not?

5 A. No, sir, not that I know of.

6 Q. But you did participate in the questioning and
7 interrogation session with Tom Creech that commenced somewhere
8 around 2:00 that afternoon?

9 A. Yes, sir.

10 Q. And that was with Detective Freeman and -- or,
11 excuse me, Wess Woodall and Officer Maxwell?

12 A. Yes, sir.

13 Q. Officer Hill, you were present in court this
14 morning when Carol Spaulding was brought in, sworn and took
15 this witness stand; were you not?

16 A. Yes, sir.

17 Q. Was that the Carol Spaulding personality that you
18 observed on the 8th day of November, 1974?

19 A. It resembles it, but it's not an absolute expression
20 and the way she kind of turns in, you know, away from you when
21 you are talking to her. She kind of stays to herself more or
22 less.

23 Q. How about her use of profanity?

24 A. As far as that, it's entirely different.

25 Q. All right. Do you have your copy of this official

1 report that you made on the 9th and 10th of November with you
2 there at the witness stand?

3 A. This is a copy, yes, sir.

4 Q. And you are sure it's an exact copy?

5 A. Yeah.

6 MR. ROBINSON: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 MR. ROBINSON: May I have this marked, please.

9 (Defendant's Exhibit H marked for identification.)

10 Q. BY MR. ROBINSON: That's all one, is it not,
11 Officer?

12 A. Yes, sir.

13 MR. ROBINSON: Your Honor, we request the admission of
14 Defendant's Exhibit H.

15 MR. THOMAS: May I ask a question in aid of objection,
16 Your Honor?

17 THE COURT: Yes.

18
19 VOIR DIRE EXAMINATION

20 BY MR. THOMAS:

21 Q. When did you prepare this report, Officer Hill?

22 A. This would have been -- putting it all together
23 it would have been over a two-day period following the day that
24 this occurred.

25 Q. And did you do it from your recollection or your

1 notes or what?

2 A. Some of it was from recollection and some of it
3 was from a few notes that I had.

4 Q. Is it accurate in every respect?

5 A. No. There is one discrepancy in the report that
6 was not changed at the time that I had sent copies out to the
7 State.

8 Q. What is that discrepancy?

9 A. That's --

10 MR. THOMAS: I withdraw the question.

11 I would object just on the basis of the statement
12 that it is inaccurate and that a proper foundation has not been
13 laid.

14 MR. ROBINSON: If I may, Your Honor, I'll go ahead on
15 the foundation.

16 THE COURT: Yes.

17

18 CROSS EXAMINATION (Continued)

19 BY MR. ROBINSON:

20 Q. Officer Hill, handing you back Defendant's Exhibit H,
21 would you examine that document and advise us as to what
22 discrepancy you are referring to?

23 A. Okay. This would have been on the eighth page at
24 the bottom. There's a total of ten pages -- nine, I think.

25 MR. ROBINSON: May I again approach the witness,

1 Your Honor?

2 THE COURT: Yes.

3 Q BY MR. ROBINSON: Would you point --

4 A That's this sentence here (indicating) and
5 continues on over to the next page.

6 Q All right. Would you advise the Court specifically
7 what that states and what the discrepancy is?

8 A Yes, sir. On that sentence it reads "He also took
9 the pocketknife that had been held to his throat earlier."

10 The discrepancy there is that I stated that Creech
11 stated this and Creech did not state that this knife had been
12 held to his throat. Miss Spaulding stated that instead of
13 Mr. Creech.

14 Q All right. Then with that discrepancy being noted,
15 is there anything else that is incorrect in your estimation in
16 the report that you made on the day after and the next day
17 after your encounter with this situation on the 8th of November,
18 1974?

19 A No, sir, not to -- except for that one insert on the
20 waiver of rights -- when I informed them of their rights.

21 Q Yes.

22 A That should have followed down a couple sentences
23 from where I put it in there.

24 Q All right. I'll ask you, then, Officer Hill, does
25 your official report, as you recorded it on the 9th and 10th of

1 November more exactly record and reflect what took place on the
2 8th of November more so than what you are testifying today,
3 approximately a year later?

4 A. Well, some of the testimony is from memory and some
5 of the testimony is from my report because my report doesn't
6 cover everything that was testified to.

7 Q. Right.

8 A. And, so, I'd say that the two of them together would
9 -- both about what I would have to say -- that is, the report
10 would be more exact, probably, than my estimations of time and
11 so forth.

12 MR. ROBINSON: All right. Your Honor, I resubmit the
13 admission of Defendant's Exhibit H.

14 MR. THOMAS: I think the foundation is still improper.
15 We object on that basis; that there has been no showing that
16 this is all the report.

17 THE COURT: Overruled. H will be admitted.

18 (Defendant's Exhibit H admitted into evidence.)

19 THE COURT: We will take our noon recess at this time and
20 you will remember the admonition, ladies and gentlemen, don't
21 discuss the case and keep your minds open.

22 We'll be in recess until 1:30, or as soon as you
23 can get back from there. I understand you have to go to Osburn,
24 I guess it is, for lunch today, so we'll wait until you get back.

25 (Noon recess taken.)

1 WALLACE, IDAHO, SATURDAY, OCTOBER 11, 1975, 1:30 P.M.

2 (Jurors re-entered the courtroom.)

3
4 THE COURT: Show that the jurors are all present.

5 MR. ROBINSON: May I proceed, Your Honor?

6 THE COURT: Yes.

7
8 WILLIAM SHERMAN HILL,
9 a witness produced on behalf of the State, having been previously
10 duly sworn, took the stand and testified further as follows:

11
12 CROSS EXAMINATION (Continued)

13 BY MR. ROBINSON:

14 Q Officer Hill, were you present during the entire
15 session of questioning, interrogation that took place, from
16 2:00 p.m. on the 8th day of November, 1974 with
17 Thomas Eugene Creech in Mountain Home?

18 A. No, sir, not for the entire questioning.

19 Q All right. Were you there at the commencement at
20 approximately 2:00 p.m.?

21 A. I think all except for the first page of his
22 statement is the only part I did not hear him, himself, state.

23 Q So, the first page of any statement that was taken
24 you were not present but do you know who was?

25 A. Yes, sir.

1 Q Who was that?

2 A That would have been Jim Maxwell, I think.

3 Q Jim Maxwell?

4 A Deputy Maxwell.

5 Q All right. And any other person?

6 A Mr. Woodall.

7 Q All right. How long did that session last?

8 A That was -- lasted approximately two hours.

9 Q Until about 4:00 p.m.?

10 A Yes, sir.

11 Q All right. What pattern or sequence did the

12 interrogation take during the course of that day; commencing at

13 the early a.m. hours after your arrival at Mountain Home

14 Sheriff's office?

15 A The first person questioned would have been

16 Mr. Creech.

17 Q All right. And what were the type of questions?

18 A They were generally on his -- where he was -- where

19 he had been on days previous to the time of the arrest, his

20 route of travel to Boise and what occurred at Boise and up

21 until the time that I arrested him.

22 Q All right. And in his answers to those particular

23 questions, did he give you a general route that was traveled from

24 Lewiston to Glenns Ferry?

25 A Yes, sir.

1 Q And dates that he was traveling?
2 A I can't remember if he mentioned any dates or not but
3 they were probably there.
4 Q All right. Did he advise you of his mode of
5 transportation?
6 A Yes, sir.
7 Q And what was that?
8 A Hitchhiking.
9 Q Did he tell you who he was with --
10 A Yes, sir.
11 Q -- while hitchhiking?
12 A Yes, sir.
13 Q Who was that?
14 A Miss Spaulding.
15 Q Mention any other persons?
16 A Only other person would have been the people in the
17 car that -- cars that gave him rides.
18 Q All right. And did he describe who -- who did he
19 describe that gave him rides?
20 A I could -- only particular ride and description that
21 I can remember is a Mazda, if I remember correctly and it would
22 have been -- I think another male and female subject, or
23 possibly just one male subject.
24 Q All right. You can't remember the exact days that
25 he mentioned that he was traveling?

1 A. No, I couldn't state to the exact day which vehicle
2 or where he was at on a specific date.

3 Q. Now, at this commencement were you still
4 questioning him as a Tommy Turner?

5 A. Yes, sir.

6 Q. When during the sequence of events of that day
7 was there an identification as to Thomas Eugene Creech?

8 A. There was a suspicion, I would say a likelihood,
9 that he was Thomas Eugene Creech brought out at the time that
10 we were interviewing Miss Spaulding.

11 Q. This was first mentioned, then, by Carol Spaulding?

12 A. No, sir, this was one of the officers had come into
13 the office and they had been running checks on the description
14 and so forth of Mr. Creech and someone mentioned that this
15 subject was probably Thomas E. Creech.

16 Q. Which officer, if you recall?

17 A. I would think it was Mr. Maxwell, Jim Maxwell.

18 Q. And do you know whether or not there had been a
19 booking process that had taken place while at the Sheriff's
20 office in Mountain Home; both fingerprinting and mugging?

21 A. I have no recollection of the booking.

22 Q. All right. By 2:00 p.m. that afternoon had
23 positive identification of Thomas Eugene Creech been made?

24 A. I think so.

25 Q. And had he advised you and the other officers that

1 he was Thomas Eugene Creech?

2 A. This was during his statement is when I first had
3 knowledge that he was Thomas Eugene Creech.

4 Q. All right.

5 A. For a fact.

6 Q. Now, commencing then with his interrogation, or
7 questioning as Thomas Turner, would you alternately go through
8 who was questioning and how?

9 A. Okay. As I stated, he was questioned first, then
10 I took him downstairs and brought Miss Spaulding back upstairs.
11 She was questioned in regards to the same questions as
12 Mr. Creech was asked.

13 Q. Specifically what?

14 A. To where they had been prior to the case, prior to
15 the -- covering this incident and the route of travel and
16 method of traveling.

17 Q. All right. Did their stories coincide?

18 A. There was some discrepancies in their stories,
19 discrepancies, basically their route of travel and --

20 Q. What in particular regarding the route of travel did
21 you interpret as being a discrepancy?

22 A. Well, they were both -- one was out of state, stated
23 that their route of travel was out of state and the other stated
24 that their route of travel was in-state.

25 Q. Which one stated that they had traveled from

1 Lewiston, Idaho, to Boise via out-of-state route?

2 A. If I remember correctly, it was Creech.

3 Q. And what was that route?

4 A. Supposedly down through Oregon.

5 Q. Did he mention any particular towns or cities along

6 the way or highways?

7 A. I can't remember any specific highway nor towns.

8 Q. Did he say anything about Pendleton?

9 A. He may have, but I don't remember for certain what

10 town he mentioned, if he mentioned any.

11 Q. And what -- was Carol Spaulding's route through

12 Idaho?

13 A. Yes, sir.

14 Q. Did she mention communities; basically the ones

15 along Highway 95 and 55? Like Grangeville, New Meadows,

16 McCall?

17 A. Yes, sir.

18 Q. All right. Then how did this interrogation, or

19 questioning, then, continue?

20 A. Then I took Miss Spaulding back on downstairs and

21 returned with Mr. Creech again.

22 Q. And each time that you would question one or the

23 other, would you confront them with discrepancies in their

24 stories?

25 A. These questions were basically brought out by

1 Detective Freeman as to what his intentions were. As far as
2 questions were, I don't remember certain -- what the questions
3 were or what their intentions were. But, there were questions
4 repeated over to try to clear up discrepancies.

5 Q All right. During this period of time how would
6 you describe Thomas Creech's condition as to alertness,
7 fatigue, sleepy; other physical characteristics?

8 A I'd have to say he might have appeared fairly
9 normal as far as I can recall.

10 Q Were his eyes bloodshot?

11 A I never really noticed whether his eyes were
12 bloodshot or not.

13 Q All right. When, during the course of that day,
14 was a written statement obtained from Carol Spaulding?

15 A I have no recollection of a written statement from
16 Miss Spaulding.

17 Q During the entire day?

18 A Not to my knowledge.

19 Q All right. Generally would you describe the
20 questions propounded and the responses during the questioning
21 period from 2:00 to 4:00 p.m. --

22 A Well --

23 Q -- I'm not asking you for the specific things said,
24 but --

25 A Yes.

1 Q -- but, how were the questions asked and how were
2 the responses given by Tom Creech?

3 A Mr. Woodall would ask Mr. Creech a question about
4 -- like where he had been, or had he been at a place and
5 approximately what time and what occurred. In return to each
6 question Creech would, you know, answer the question.

7 Q Now, you say that you were not present when the
8 conversation involved that which was recorded on the first page --

9 A No, sir.

10 Q -- of a written statement?

11 A That's right.

12 Q Is that correct?

13 A That's correct.

14 Q Would you describe the responses of Thomas Creech
15 while you were there following that first page of the statement
16 as just "pouring out with conversation and information"?

17 A He answered the questions when they were asked. As
18 far as offering information, you mean answering, you know,
19 giving information without being asked a question? About all I
20 can remember is that he answered the question when it was asked.

21 Q Were they lengthy answers?

22 A Some of them, yeah.

23 Q With great detail?

24 A He'd give the information that was required for the
25 question but, as far as the details, I know that -- like he would

1 ask a question, Creech would answer it and then Mr. Woodall would
2 specify a certain point in the question, or in the answer, that
3 he wanted cleared up and he would give --

4 Q Officer Hill, what I'm getting at, was he talking
5 faster than Officer Woodall could write it all down?

6 A Oh, yeah.

7 Q Were there times that Officer Woodall would have to
8 stop him and say "Wait a minute"?

9 A Yeah, there was that, yes.

10 Q Officer Woodall asked him to repeat what he said
11 quite often?

12 A There was instances he had to repeat it.

13 Q And from the time that you were there, shortly
14 after 2:00, until the completion of the statement, would you
15 describe the question and answer period as a "bubbling out of
16 information" by Tom Creech as opposed to having to pull each
17 answer out of him?

18 MR. THOMAS: Objection, Your Honor, that's been asked
19 and answered.

20 THE COURT: Overruled.

21 Q BY MR. ROBINSON: Do you understand my question,
22 Officer Hill?

23 A I understand it.

24 Q All right.

25 A He gave the answers freely, yes.

1 Q And then, at approximately 4:00 p.m. you put
2 your signature on each page?
3 A Yes, sir.
4 Q And Officer Woodall put his signature on each page?
5 A Yes, sir.
6 Q And was it at that point that Tom Creech was asked
7 to put his signature on each page?
8 A Yes, sir.
9 Q And then, in going back through the statements --
10 through the pages of the statement, were lines drawn on it and
11 -- by Officer Woodall, and initialed then by Tom Creech?
12 A Yes, sir.
13 Q All of that took place after the entire statement
14 had been prepared?
15 A As I recall, yes, sir.
16 Q After the statement itself was prepared, did the
17 interrogation session continue?
18 A After that I don't remember any further questions
19 being asked.
20 Q What then did happen?
21 A At that point we took Mr. Creech and put him in a
22 cell.
23 Q All right.
24 A And then, that was the extent of it. It was after
25 that that --

1 Q What time did you leave and go back to Glenns Ferry?
2 A I stuck around for several hours.
3 Q Even after Maxwell, Woodall, Creech and Spaulding
4 had departed for transporting to Cascade?
5 A No, it was approximately the same time they left
6 because I helped them load up some of the evidence.
7 Q And what time was that?
8 A It was after dark. I couldn't say for certain.
9 This must have been -- I couldn't even say what time it was.
10 Q Do you recall what time you got back to Glenns Ferry?
11 A No, sir.
12 Q Was Carol Spaulding interrogated and questioned
13 again after 4:00 p.m. on the completion of Tom Creech's session?
14 A Not to my knowledge.
15 Q If she was, you weren't present?
16 A Yes, sir.
17 Q Officer Hill, were you there when Tom Creech said
18 "I need help"?
19 A No, sir.
20 Q Were you advised of any part of that?
21 A I had -- was told that he stated this.
22 MR. ROBINSON: May I, Your Honor, have 55 and 56.
23 May I approach the witness, Your Honor?
24 THE COURT: Yes.
25 Q BY MR. ROBINSON: Officer Hill, handing you what

1 has been previously marked as State's Exhibit No. 55, I notice
2 that first page is a typewritten page; is that correct, sir?

3 A Yes, sir, all except for the signatures.

4 Q All except for the signatures and your signature is
5 or is not on that page?

6 A Is not on that page.

7 Q Is your signature on the next page that has
8 handwritten printing?

9 A Yes, sir.

10 Q And is that the information that commenced while
11 you were present?

12 A This information was given prior to my arrival.

13 Q Prior to your arrival?

14 A Yes, sir.

15 Q All right. Would you look specifically at that
16 statement and then testify as to what point in the information
17 disclosed in that statement that you arrived?

18 A If I remember correctly, it was approximately the
19 top of the second page, somewhere on the second page is when I
20 came in.

21 Q All right, sir, without -- would you point that out
22 to me, specifically as to --

23 A Seems to me like I remember him stating most of this
24 from the top of the page even.

25 Q All right. So, all of the -- don't fold it over, I

1 want to be handed so I could look at it please, Officer Hill.

2 And that would be Page 2 of 7 where it commences
3 with a crossover sign and a numerical number two; is that correct?

4 A. Yes, sir.

5 Q And then I take it your signature was put on the first
6 page of that at 4:00 p.m. with Tom Creech acknowledging that
7 this was his statement?

8 A Yes, sir, this is after I confirmed that is what he
9 said, that's as far as my acknowledgement went on the first
10 page.

11 Q And this is not your printing, is it?

12 A No, sir.

13 Q Who was doing the printing?

14 A This would have been Mr. Woodall.

15 MR. ROBINSON: That's all I have, Your Honor.

16 MR. THOMAS: No redirect, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: May I be excused?

19 THE COURT: The witness would like to be excused.

20 MR. THOMAS: We have no objection.

21 MR. REMAKLUS: That's fine.

22 MR. ROBINSON: No objection.

23 THE COURT: You may be excused if you want to leave,
24 then.

25 MR. REMAKLUS: Call Officer Menzik.

1 GEORGE M. MENZIK,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q Would you state your name, please.

8 A George M. Menzik.

9 Q Where do you reside, Mr. Menzik?

10 A Glenns Ferry, Idaho.

11 Q And what is your occupation?

12 A I'm a Deputy Sheriff with the Elmore County
13 Sheriff's Department.

14 Q And how long have you been employed by the Sheriff's
15 Department?

16 A Three days, sir.

17 Q What were you doing before that?

18 A I was a police officer with the City of Glenns Ferry,
19 sir.

20 Q And how long were you a police officer there for
21 Glenns Ferry?

22 A I was sworn in on June, 1974.

23 Q And have you had prior police experience, Mr. Menzik?

24 A No, sir, I had not.

25 Q Do you have any police training -- or, let me ask you

1 this: From the time you were sworn in there on the Glenns Ferry
2 Department, until the present time, have you had any specialized
3 police training?

4 A Yes, sir. I'm a certified police officer for the
5 State of Idaho, I have 255 hours on law enforcement, I have 16
6 hours in drug field testing, eight hours in breath analysis
7 testing, 82 hours in emergency medical training.

8 Q Now, directing your attention to the early morning
9 hours of the 8th day of November, 1974, were you employed by the
10 City of Glenns Ferry as a police officer?

11 A Yes, sir, I was.

12 Q And did you have occasion to -- where were you in
13 the early morning hours? Were you home?

14 A I was home in bed, sir.

15 Q Did you have occasion to go on duty that night?

16 A Yes, sir, I did.

17 Q And why did you go on duty that night?

18 A I was called by Officer William Hill for an
19 assistance.

20 Q And what, if anything, did you do as a result of
21 that call?

22 A I immediately got out of bed and put my clothes on
23 and jumped in my private automobile and headed for the Police
24 Station.

25 Q Did you meet Officer Hill?

1 A. Yes, sir. He was waiting in the police car on
2 First and Commercial Streets; which is the corner where our
3 Police Station is located.

4 Q. Is that the Officer William Hill that just left the
5 witness stand?

6 A. Yes, sir, it is.

7 Q. Okay. What, if anything, then happened?

8 A. I immediately got into the police car and we proceeded
9 east down First Street. Officer Hill was -- told me that there
10 was an automobile that just went around the corner at First
11 Street and was filling me in on who he assumed was in the
12 automobile at that time.

13 Q. And then what -- then what happened next?

14 A. We proceeded east down First Street, we turned the
15 corner heading, basically north, then we seen a pair of
16 taillights up approximately a block and a half ahead of us at
17 this time and Officer Hill was driving. He accelerated the
18 automobile a little more, the automobile reached the corner of
19 East Loop of Glenns Ferry and Highway 30. At this time we were
20 directly behind it. It stopped for a stop sign, there
21 Officer Hill had already flipped his red and emergency lights
22 on, his red and blue lights, the automobile then proceeded east
23 on Highway 30 very slowly and pulled right off the road and
24 stopped. We pulled the police car directly in behind it.

25 Q. Did you have the lights of the police car illuminating

1 the other vehicle?

2 A. Yes, sir. The emergency lights were on and
3 Officer Hill also turned on the spotlight and it was shining
4 in the back window of the police car -- or the automobile in
5 front of us.

6 Q. Did you observe what kind of a car it was?

7 A. Yes, sir. It was an Oldsmobile, white-type, and
8 at that time I saw a dark bottom.

9 Q. And then what, if anything, happened?

10 A. The -- I had the -- released the shotgun from its
11 rack, Officer Hill released the emergency -- the electronic
12 rack, there's a button underneath the steering wheel and he
13 released the shotgun. I took it out and loaded it, I opened my
14 door and, using the door as a shield, I pointed the shotgun at
15 the automobile in front of me. The driver's side of the
16 automobile in front opened, a gentleman got out of the car and
17 was walking back towards the police car. I then advised him to
18 place his hands up on the top of the police car and not to move;
19 which he did.

20 Officer Hill then got out of the police car and
21 walked around the door into the highway and came up from behind
22 him. At this time I noticed that there was another passenger in
23 the automobile.

24 Q. Officer Menzik, perhaps I misunderstood you, but I
25 thought you said that whoever got out of the driver's side of

1 the automobile that you stopped, put his hands on top of the
2 police car, is that right?

3 A. I'm sorry, on top of his automobile, not the police
4 car.

5 Q. Would you please proceed.

6 A. Yes, sir.

7 Officer Hill approached the subject from behind and
8 started to search him, pat him down for weapons. At that time
9 I did notice that there was another individual in the automobile,
10 I went over to the passenger side of the car in front, opened
11 the door and stuck the shotgun in the door. Mr. Creech was
12 setting at the window side and Carol Spaulding was sitting in
13 the middle of the car. I advised them then at that time to
14 place their hands on top of their head, step out of the
15 automobile; which they did, and then to place their hands on
16 top of the -- Mr. Rivers' automobile.

17 Q. Were all three of these individuals -- which seat
18 did they get out of?

19 A. All out of the front seat, sir.

20 Q. Now, is the individual that you referred to as
21 "Mr. Creech" at that time, is he present here in the courtroom?

22 A. Yes, sir, he is.

23 Q. And would you designate who you mean?

24 A. Yes, sir. He's sitting at the defendant's table,
25 wearing a brown long-sleeved shirt and brown and white checkered

1 pants.

2 Q All right. Would you tell us then --

3 MR. REMAKLUS: May the record show that he indicated
4 the defendant, Tom E. Creech, Your Honor?

5 THE COURT: Yes.

6 Q BY MR. REMAKLUS: Would you please proceed,
7 Officer Menzik.

8 A Yes, sir. Officer Hill then completed his pat down
9 search of Mr. Rivers, asked Mr. Rivers to step to the rear of his
10 automobile and put his hands up on the trunk; which he did.

11 He stepped around and proceeded to pat down Mr. Creech
12 and also Carol Spaulding while I kept them all covered with the
13 shotgun.

14 Q Did you have an opportunity to observe how the
15 defendant was dressed at that time?

16 A Yes, sir. He had on a Levi jacket and he had on a
17 gray shirt and dark gray pants.

18 Q Did you -- and the female occupant of the car, could
19 you describe what she was wearing?

20 A Yes. She had on a long dark maxi coat. At this
21 time I assumed it was black. It was dark out there, with a
22 hood on the back and then at that time that's all I could see.

23 Q Um-hmm. And did you determine who the female was?

24 A Not at this time. She gave her name to
25 Officer Hill.

1 Q Um-hmm. Who did it turn out to be, do you know?

2 A Yes, Carol Spaulding.

3 Q Then what, if anything, did you do at that time,
4 Officer?

5 A At that time I placed the three subjects under
6 arrest and we placed them in the back seat of our patrol car;
7 which is separated by a screen.

8 Q This separates, you mean, the front and back seat?

9 A Yes, sir.

10 Q And then how were they placed in the car?

11 A Mr. Rivers was in the left-hand side of the
12 automobile behind the driver, Carol was in the center and
13 Mr. Creech was on the right-hand side.

14 Q All right. Then what happened next, if anything?

15 A At that time I got into the front of the automobile
16 on the passenger side, Officer Hill was behind the wheel of the
17 car, he was speaking on the radio, running some checks on
18 driver's licenses he had received from Mr. Rivers and from
19 Mr. Creech. As we waited on the radio, Officer Hill then
20 pulled out his Miranda Warning card and gave Miranda Warning
21 rights to the three suspects in the automobile.

22 Q Were you present in court this morning when
23 Officer Hill was testifying?

24 A Yes, sir, I was.

25 Q And were the Miranda Rights that he read from that

1 card what he -- is that what he said at that time and place?

2 A. Yes, it was.

3 Q. Okay, please continue.

4 A. At this time I asked Mr. Rivers if I may look into
5 his automobile and he said to go ahead, he had no objections.

6 I went to the passenger side of his automobile, the
7 door was open where I got them out. On the front floorboard, on
8 the right-hand side of the car I noticed a black handbag. I
9 picked it up, took it in back right to the police car, we have a
10 console setting in between the front seat of the police car.
11 I held it up and I asked who it belonged to at this time and
12 no one said anything. I asked the second time who it belonged
13 to and Mr. Rivers at this time stated that it wasn't his.

14 I unzipped the bag, it had a zipper on the top, I
15 unzipped the bag and lying on top of the bag was a pistol and a
16 brown holster.

17 I held the bag up from the bottom, I never touched
18 the weapon, I held it up and I said "Who does this belong to?"
19 No one said anything and I asked one more time "Who does this
20 belong to?" No one said a word. I put it back and zipped it
21 back up.

22 At that time I asked Officer Hill how carefully he
23 had searched the suspects and he said he had patted them down
24 but not real good. So, I took the suspects back out of the
25 automobile and patted them down again, put handcuffs on

1 Mr. Creech and Carol Spaulding, put them back in the back seat
2 of the police car.

3 Q At this time had you received any identification,
4 documents, from any of the three individuals?

5 A No, sir, I had not.

6 Q When did -- did you observe whether or not the
7 three individuals made any response when Officer Hill asked them
8 if they understood the Miranda Warning?

9 A Yes, sir, I was setting sideways in the seat
10 observing the three people at the time and they all indicated
11 that they understood. Carol was a little hesitant at first
12 but she stated that she did.

13 Q And did the defendant say anything at that point?

14 A Yes, sir, he did. He stated "Yes".

15 Q Now, what did you next do, if anything?

16 A I asked Mr. Rivers if it was all right if I could
17 drive his automobile back into town and he indicated that he
18 didn't particularly want me to because he was driving a long
19 way and he was having some kind of problem.

20 Then I advised him if he didn't give me permission
21 to drive it back that we would have to have it towed in.
22 So, he went ahead and told me to go ahead and drive it back in.

23 I got behind the wheel of the vehicle, made a
24 U-turn in the highway and we proceeded back the same road we had
25 come, to the Police Station in Glens Ferry.

1 Q And where were the three suspects at that time?
2 A Three suspects were in the police car in the back
3 seat.
4 Q And were they transported to the Police Station also?
5 A Yes, sir, the police car was directly behind me all
6 the time.
7 Q They were in the back seat of the police car; were
8 they not?
9 A Yes, sir, they were.
10 Q When you got to the Police Station, do you have any
11 idea what time it was?
12 A Yes, sir, it was approximately 2:45 a.m., sir.
13 Q Now, what, if anything, did you do at that point?
14 A At that point we took the three suspects out of the
15 police car and put them into the Police Station, set them in
16 chairs. Officer Hill was on the telephone at this time, he had
17 laid the identification on the desk. The driver's license that
18 Mr. Creech had given him, I went over and picked it up and
19 looked at it and then I looked at Mr. Creech and the pictures
20 were not the same. The driver's license was to a
21 Mr. Joe Carl Adams. I brought this to Officer Hill's
22 attention at this time; that the pictures were not the same.
23 Q Did you take the hand bag that you referred to out
24 of the Rivers car into the Police Station at that time?
25 A Yes, sir. It was brought into the Police Station.

1 Q Did you inspect it at that time?

2 A No, sir, I did not.

3 Q Did you make any -- then what, if anything, did you
4 do at the Glens Ferry Police Station with reference to the
5 Rivers vehicle?

6 A I then asked Mr. Rivers if I could look into his
7 vehicle, give it a thorough inspection and he indicated that I
8 could. I got a Consent to Search form and gave it to
9 Mr. Rivers and he read it and signed it, it was all right to
10 look in his vehicle.

11 Q Did you then look in his vehicle?

12 A Not right then. Officer -- Detective Freeman
13 arrived approximately at this time, it was approximately
14 3:40 a.m. and they were talking on the phone. They were --
15 Jack was busy at that time giving Miranda Warning rights to
16 the three suspects and they were filling them out and he was
17 reading them and I initialed the witnessing that they understood
18 each one of them and then I think he was on the phone at that
19 time to the Valley County Sheriff, Maxwell and --

20 Q Who was on the phone, Officer?

21 A Bill Hill at first and then Jack Freeman was
22 talking to him on the phone.

23 Then we were advised to look for another jacket in
24 the car and I went out to Mr. Rivers' automobile at this time
25 with Mr. Rivers and in the back seat of the car I found a pillow,

1 a sleeping bag and a pea coat-type jacket, dark color, fur
2 collar with an orange lining in it. I took that and brought it
3 right into the Police Station.

4 MR. REMAKLUS: May I approach the witness, Your Honor?

5 THE COURT: Yes.

6 Q BY MR. REMAKLUS: Would you open State's Exhibit 47,
7 please, Officer.

8 A (Witness complied.)

9 Q Officer Menzik, would you describe what you are
10 holding at this time?

11 A Yes, sir. A pea coat-type jacket, blue in color,
12 dark blue with a fur lining and an orange interior.

13 Q And is there a "Q" number on that?

14 A Yes, sir, there is.

15 Q And what is that?

16 A Q-31.

17 Q And have you seen that coat before, Officer Menzik?

18 A Either this one or a similar jacket, yes, sir.

19 Q And when was that?

20 A That's the jacket I got out of the police -- out of
21 Mr. Rivers' automobile and brought into the Police Station.

22 Q On the night in question that we're discussing?

23 A Yes, sir.

24 Q Okay. Now, would you remove the other contents of
25 the Exhibit.

1 A. (Witness complied.)
2 Q. Would you describe what you are holding in your
3 hand?
4 A. Levi-type jacket.
5 Q. And would you look and see if there is a "Q" number
6 on that, Officer Menzik?
7 A. Yes, sir, Q-30.
8 Q. And have you seen that coat before?
9 A. Yes, sir, either this or similar jacket. It was
10 the one that Mr. Creech was wearing at the time he was arrested.
11 Q. And that was on the night that we're discussing?
12 A. Yes, sir.
13 Q. All right. Thank you, Officer.
14 Then did you make any inspection of the black bag
15 and the contents thereof at the Glenns Ferry Police Station?
16 A. No, sir, I did not. The weapon was removed from the
17 bag and was laying on the desk. I looked at it at that time, it
18 had a clip in it, we removed the clip and also had a shell in
19 the chamber. The shell was removed from the chamber.
20 Q. Now, handing you what's been marked for
21 identification as State's Exhibit 25, would you look at it
22 carefully, please.
23 A. (Witness complied.)
24 Q. Have you seen that object before?
25 A. Yes, sir.

1 Q And would you describe what it is and tell me where
2 you've seen it before?

3 A This or similar bag is the one that was on the front
4 floorboard of the Rivers automobile which I removed, brought
5 into the police car and then brought into the Police Station.

6 Q And when was that?

7 A This was on the morning in question, 8th of November.

8 Q Of 1974?

9 A Yes, sir.

10 Q Thank you.

11 Handing you what's been marked for identification
12 as State's Exhibits 22 and 23, would you inspect the same, please,
13 Officer Menzik.

14 A Yes, sir.

15 Q And referring to State's Exhibit 22, can you tell us
16 what it is, please?

17 A Semi-automatic weapon, high standard.

18 Q What caliber?

19 A .22, sir.

20 Q Have you seen that weapon before?

21 A Yes, sir, I have.

22 Q And where was that?

23 A This was the weapon that was on top of the bag that
24 I removed from the automobile, complete.

25 Q Do you recognize that as being the one in the same

1 pistol?

2 A Yes, sir, I do.

3 Q Now, when you say "on top of the bag" what time --
4 or what period of time are you referring to?

5 A Approximately 2:00 a.m., sir, or 2:45.

6 Q And where were you at that time?

7 A We were up on Highway 30 when I opened the bag and
8 this weapon was lying right on top.

9 Q And you opened -- is it the black bag here,
10 State's Exhibit 25 --

11 A Yes, sir, it is.

12 Q -- that you are referring to?

13 With reference to the Exhibits 23, Officer Menzik,
14 would you tell us what it is and whether or not you've seen it
15 before?

16 A Yes, sir. It is a brown holster, it's the same
17 holster that the weapon was in when it was laying on top of the
18 bag, also when it was removed from the bag and setting on the
19 desk in the Police Station.

20 Q Thank you.

21 Officer Menzik, handing you State's Exhibit No. 25-A,
22 would you look at it, please.

23 A Yes, sir.

24 Q Would you tell us what it is and whether or not you
25 have seen them before?

1 A. Two boxes of .22 ammunition. I saw two boxes of
2 ammunition on the desk in the Police Station.
3 Q. When was that and where?
4 A. It was in Glenns Ferry Police Station in the morning
5 of the 8th of November, 1974.
6 Q. Did it appear to be the same kind of shells?
7 A. I didn't look at them real close, sir.
8 Q. Thank you.
9 You mentioned that there were shells in the clip
10 and in the chamber, the pistol, State's Exhibit 22. Did you
11 unload it, Officer Menzik?
12 A. Yes, sir, I took the one out of the chamber.
13 Q. And what did you do with that?
14 A. Laid it on the desk, sir.
15 Q. And were there other shells on the desk at that
16 time?
17 A. Yes, sir, there was some loose shells.
18 Q. And is there -- was there another officer present
19 at this time, did you say?
20 A. Yes, sir, Officer -- or Detective Freeman arrived
21 from Mountain Home approximately 3:40 a.m.
22 Q. All right. Did you have any conversation at that
23 time and place with Mr. Rivers?
24 A. Not to the best of my knowledge, sir, no, sir.
25 Q. Did he at that time, did he -- you have any

1 discussion with him about where he had met Mr. Creech?

2 A. Yes, sir, I did.

3 Q And where were you? Were you still at the Police
4 Station?

5 A We were at the Police Station in Glenns Ferry, yes,
6 sir.

7 Q Now, could you tell us about that conversation.

8 A All right, sir. He stated that he was at a
9 rest stop right out of Boise, Idaho. The reason he stopped
10 there, it was raining real bad and he was tired and that is
11 where he had picked up the two people that was in the automobile
12 then identified as Tom Turner and Carol Spaulding. They had
13 asked if -- the girl, Carol, asked if she could get in out of
14 the rain, her and her boyfriend, because it had been raining and
15 it was cold and he stated they could.

16 They said they were heading in basically the same
17 direction and I guess, asking for a ride, he indicated he could
18 give them a ride probably as far as Salt Lake City, indicated
19 he had stopped in Mountain Home looking for a place to get
20 coffee and couldn't find anything open, had stopped again in
21 Hammett trying to find a restaurant open and nothing was open.
22 Then he had stopped in Glenns Ferry for a cup of coffee.

23 Q Then what happened, if anything, Mr. Menzik?

24 A At this time Detective Freeman, myself, put
25 Mr. Creech and Carol Spaulding into his automobile and transported

1 them to Mountain Home.

2 Q And would you describe the positions that the four
3 of you occupied in the vehicle, please.

4 A All right, sir. Detective Freeman was driving his
5 automobile, I was in the right-hand passenger side, Carol was
6 setting approximately in the middle of the back seat and
7 Mr. Creech was on the right-hand side. They were close together
8 in the back seat.

9 Q About how far is it from Mountain Home -- Glenns Ferry
10 up to Mountain Home, Mr. Menzik?

11 A It's approximately 28 miles.

12 Q And could you observe whether or not Miss Spaulding
13 and Tom Creech were engaged in conversation during this time?

14 A Yes, sir, they were.

15 Q Could you tell what they were saying?

16 A No, sir, I could not. They were speaking very
17 low.

18 Q Do you have any idea how long it took you to
19 transport them from Glenns Ferry to Mountain Home, Idaho?

20 A Approximately 25 minutes.

21 Q And where did you go when you got to Mountain Home?

22 A We arrived at the Sheriff's office in Mountain Home
23 and the three suspects were taken upstairs and, then,
24 Mr. Rivers and Carol was taken downstairs to what was then the
25 Sheriff's office.

1 Q And then what, if anything, happened?

2 A I stayed downstairs all the time from there on and
3 I watched Carol for awhile and Mr. Rivers while they were
4 downstairs.

5 Q Was Mr. Freeman there with you at that time?

6 A Just to the point of upstairs when we went up and
7 then right downstairs, he stayed up.

8 Q Now, a few minutes ago during your testimony you
9 used the name "Tommy Turner" as I recall?

10 A Yes, sir.

11 Q And who were you referring to at that time?

12 A When the -- when I noticed that the driver's
13 license that was given to us for identification the name of
14 Mr. Adams was not the gentleman setting in the Police Station.
15 Officer Hill then asked him what his name was and he said it
16 was "Tommy Turner". He gave an address of somewhere in Kentucky
17 but I can't remember what address he gave.

18 Officer Hill asked him again if this was his right
19 name this time and he said "Yes" it was. So, from that point
20 on I assumed he was Tommy Turner.

21 Q And did you -- how long did this impression last?
22 How long did you know the defendant as Tommy Turner?

23 A Until later on in the afternoon, approximately
24 5:30, 6:00, I think it was. I was at home eating supper and
25 I can't remember where I heard it, but that was the first time

1 I knew it wasn't Tommy Turner.

2 Q I want to go back -- first of all, let me ask you
3 this: After you transported the prisoners to Mountain Home,
4 how long did you stay with them?

5 A I stayed in the Sheriff's office downstairs
6 approximately -- a little after 9:00. We had had -- we had
7 gone out to coffee and had breakfast and I left shortly after
8 we had breakfast.

9 Q This is 9:00 a.m.?

10 A Yes, sir, 9:00, 10:00 a.m., right in there.
11 I'm not sure of the exact time.

12 Q And then did you return to Glenns Ferry?

13 A Yes, sir, I did.

14 Q Would you please explain, if you can, the appearance
15 and the actions or manner of actions and speech of the
16 defendant when you first saw them out on Highway 30?

17 A Yes, sir. Mr. Creech was very quiet, he spoke
18 very low and asked -- any questions that we asked, he went
19 ahead and answered them. He seemed just a little excited at
20 the time, but basically I noticed nothing out of the ordinary.

21 Q Then, after you got to the Glenns Ferry Police
22 Station and went inside, did you have an opportunity to observe
23 his actions and conduct?

24 A Yes, sir, I did.

25 Q And would you explain that, please.

1 A. Yes, sir. He was setting in a chair and, again, he
2 talked back and forth with Carol on occasion. He was still very
3 quiet, set in the chair. He never gave us any problem whatsoever
4 and he seemed a little nervous at the time.

5 Q. Would you describe his appearance there at the
6 Police Station?

7 A. Yes, sir. His hair was a little messed up, his eyes
8 were a little bloodshot, I noticed this when I looked at his
9 driver's license. When I looked at the driver's license he
10 looked at me, I had to look at the -- right in the face to see
11 this and other than that everything appeared pretty normal.

12 Q. Could you describe his acts and conduct during
13 the trip from Glenns Ferry to Mountain Home?

14 A. Yes, sir. He set in the back seat and him and
15 Carol were discussing something back there. I could not
16 understand what they were saying, he was -- they were talking
17 real low but he, basically, just set in the back seat.

18 Q. Officer Menzik, did you have occasion to give any
19 one of the three people you stopped that night, the Miranda
20 Warnings?

21 A. No, sir. I witnessed the Miranda Warnings as given
22 by Detective Freeman at the Police Station in Glenns Ferry.

23 Q. And as I recall, didn't you testify that the
24 Miranda Warnings had been given previously to that?

25 A. Out on the highway, yes, sir, by Officer Hill.

1 Q Directing your attention to the giving of the
2 Miranda Warning at the Police Station by Detective Freeman, did
3 you observe the manner which that was done?

4 A Yes, sir, I did. We have a preprinted form,
5 Notification of Rights is the title of it. It has some printing
6 on the top and, then, it goes into each individual right. It
7 has a blank beside each one for a place for your initials and
8 after the -- oh, they were given to each individual then they
9 were asked if they understood their rights and if they did
10 understand them to please initial beside each block; which all
11 three suspects did at this time. Then they signed the bottom
12 waiving these rights.

13 Q Did you observe any of these signed waivers after
14 they were signed? Did you have occasion to read any of them?

15 A Yes, sir. As I signed them myself I noticed that
16 each one were initialed in the proper places and signed. I
17 watched as each one was signed because I initialed -- I signed
18 as witnessing their signature.

19 Q Did you see any -- did you see the document that
20 was signed at that time by the -- Miranda Warning was signed at
21 that time by the defendant?

22 A Yes, sir, I did.

23 Q Did you observe the name on -- that was signed by
24 him on that sheet?

25 A Yes, sir, I did.

1 Q And what was that name?
2 A Tom Turner.
3 MR. REMAKLUS: May Counsel approach the bench for just
4 a moment, please, Your Honor?
5 THE COURT: Yes.
6 (Unreported conference between Court and Counsel.)
7 MR. REMAKLUS: Mark that as State's Exhibit No. 57.
8 (State's Exhibit No. 57 marked for identification.)
9 Q BY MR. REMAKLUS: Officer Menzik, I'm handing you
10 what's been marked for identification as State's Exhibit No. 57.
11 Would you inspect that, please.
12 A Yes, sir.
13 Q Would you tell me what it is, please.
14 A It's a Notification of Rights form that was given
15 to Tommy Turner.
16 Q And is that the document that you have been
17 describing here in your previous testimony?
18 A Yes, sir, it is.
19 Q And is there a date appearing on that?
20 A Yes, sir, 11-8-74.
21 Q And did you observe the defendant sign that?
22 A Yes, sir, I did.
23 Q And what is the signature that appears on there?
24 A Tom Turner.
25 Q And directing your attention to the boxes at the end

1 of the questions, are those initialed?
2 A. Yes, sir, they are.
3 Q. And did you observe them being initialed?
4 A. Yes, sir, I did.
5 Q. And by whom were they initialed?
6 A. "T.T."
7 Q. And by whom were they initialed?
8 A. Tom Turner.
9 Q. And who is the individual that you watched -- did
10 you watch the individual affix those initials?
11 A. Yes, sir, I did.
12 Q. And who was that?
13 A. Mr. Eugene Creech.
14 Q. Did you happen to observe the name of the other
15 witness on there?
16 A. Yes, sir, I did.
17 Q. And who was that?
18 A. Jack Freeman.
19 MR. REMAKLUS: I would offer State's Exhibit 57, Your
20 Honor.
21 MR. ROBINSON: No objection.
22 THE COURT: Fifty-seven will be admitted.
23 (State's Exhibit No. 57 admitted into evidence.)
24 MR. REMAKLUS: Pass that around, please.
25 THE COURT: Mr. Remaklus, I wonder if it wouldn't save

1 time on this to just have you read it into the record for the
2 jury.

3 MR. REMAKLUS: Yes. I'll read it into the record.

4 I'm reading Plaintiff's Exhibit 57, "Notification
5 of Rights: Before we ask you any questions, you must understand
6 that you have certain rights under both the Idaho and United
7 States Constitutions. You do not have to talk to us. You have
8 the absolute right to remain silent. Anything you say can and
9 will be used against you in Court. You have the right to talk
10 to a lawyer for advice before we ask you any questions and to
11 have the advice and presence of a lawyer even if you cannot
12 afford to hire one. You have the right to request the
13 services of the Public Defender at any time if you cannot afford
14 to hire a lawyer, and such Public Defender will be assigned to
15 represent you at public expense. If you want a lawyer present
16 or if you wish to consult a lawyer, you have the absolute right
17 to remain silent until he is present or has been consulted,
18 whether he be the Public Defender or a lawyer of your own
19 choosing. If you wish to answer questions now without a lawyer
20 present, you have the right to stop answering questions at any
21 time and remain silent.

22 "Waiver: (Place initials at the end of each
23 statement below only after you completely understand what
24 such statement means.)

25 "I have read the above statement of my rights and

1 understand that;

2 1. I have the absolute right to remain silent."
3 There is a blank and the letters in bold print appear "T.T."

4 "2. Anything I say can and will be used against
5 me in Court." Again a blank and ball-point pen the initials
6 "T.T."

7 "3. I have the right to the advice of a lawyer
8 before answering any questions." A blank again, the initials
9 in ball-point, "T.T."

10 "4. I have the right to have a lawyer present
11 during any questioning." A blank, the initials in ball-point,
12 "T.T."

13 "5. I have the right to a lawyer even if I cannot
14 afford one, and if I cannot afford one, I may use the services
15 of the Public Defender at any time and at public expense." A
16 blank and the initials "T.T." written in ball-point pen.

17 "6. If I choose to answer any questions without
18 the advice of a lawyer or without a lawyer being present, I
19 have the right to stop answering questions at any time and
20 remain silent." Another blank with the initials appearing in
21 ball-point "T.T."

22 "I can read and write the English language, or if I
23 cannot, the above rights were explained to me by an interpreter
24 who speaks the language I can read and write. I am willing to
25 answer questions and make a statement. I do not want a lawyer.

1 I understand and know what I am doing. No promises or threats
2 have been made to me, and no pressure of any kind has been used
3 against me."

4 Signed in ball-point pen "Tom Turner" and there's
5 a blank with the word "Place" written under it and the initials
6 here appear to be "G.F.P.D."

7 Under that the date, "11-8-74". Under that the
8 time "4:17 A.M."

9 The lower left-hand corner where witnesses
10 "George M. Menzik" and second line "Jack Freeman".

11 Let me check my notes just a moment.

12 You may examine, Mr. Robinson.

13 THE COURT: We will take a ten-minute recess. If you
14 will remember the admonition, ladies and gentlemen, don't
15 discuss the case and keep your minds open.

16 (Recess taken.)

17 THE COURT: I just wanted to make the record reflect
18 that the Exhibit that was marked Exhibit 57 for the trial, was
19 Exhibit 2 in the Suppression Hearing; that has been taken from
20 the Suppression Hearing report and put in evidence in this trial
21 as Exhibit 57.

22 MR. ROBINSON: Yes, Your Honor. While we are making
23 that record, Mr. Walker was agreed and stipulated by both the
24 State and the Defense to be released and Officer Jim Maxwell
25 needed to return to Cascade, be back about Wednesday and we told

1 him there's no problem.

2 THE COURT: Very well.

3 MR. REMAKLUS: So agreed, yes, sir.

4 (Jurors re-entered the courtroom.)

5 THE COURT: Show the jurors are all present.

6 MR. ROBINSON: May I proceed, Your Honor?

7 THE COURT: Yes.

8

9 CROSS EXAMINATION

10 BY MR. ROBINSON:

11 Q Officer Menzik, would you describe Tom Creech's
12 demeanor as docile, subdued, from the time that you were with
13 him at the Glenns Ferry Police Department through the period of
14 time, about 5:00 a.m. when, as I understand your last contact
15 with him was?

16 A He was very quiet, yes, sir.

17 Q All right. Exhibit any signs of nervousness?

18 A Just a little, yes, sir.

19 Q Well, describe what you saw that you interpreted
20 as signs of nervousness?

21 A Well, he -- when we was in the police car
22 originally he had his hands up on the screen and he took them
23 down once or twice. Officer Hill advised him to put his hands
24 up on the screen and he took them down once or twice and when
25 he was sitting in the Police Station he moved around in his chair

1 a little and, basically, that was it.

2 Q All right. Now, Carol Spaulding, of course, also
3 took her hands down from the screen and had to be told also to
4 put her hands back up on the screen several times?

5 A Yes, sir, she did.

6 Q All right. Now, in this ride from Glenns Ferry to
7 Mountain Home that you described Carol and Tom sitting in the
8 back seat having a low-toned conversation; is that the way you
9 described it?

10 A Yes, sir.

11 Q Were you able to overhear any of their conversation?

12 A No, sir, I wasn't.

13 Q Was that a continuous conversation from the time you
14 left Glenns Ferry Police Department until your arrival at
15 the Mountain Home Sheriff's office?

16 A Pretty well, yes, sir. They talked quite a bit.

17 Q So, that's for about 25 minutes to a half hour?

18 A Yes, sir.

19 Q And you arrived in Mountain Home there somewhere
20 around, between quarter to five and 5:00 a.m.?

21 A Yes, sir, we did.

22 Q And you stayed downstairs when Tom was taken
23 upstairs with Jack Freeman and Officer Hill?

24 A Yes, sir, I did.

25 Q Now, from that point on did you have any further

1 contact with Tom Creech?

2 A. No, sir, I did not.

3 Q. Did you have any contact with Carol Spaulding?

4 A. Yes, sir, I did.

5 Q. And this is from 5:00, then, approximately around
6 5:00 until what time did you have further contacts with
7 Carol Spaulding?

8 A. It was approximately an hour downstairs there.

9 Q. Between 5:00 and 6:00?

10 A. Roughly, yes, sir.

11 Q. All right. Would you describe her demeanor,
12 attitude, expressed by outward things and overt acts that she
13 did?

14 A. Yes, sir. She bit her lip a lot like she was doing
15 on the stand this morning. She would look from side to side,
16 she swore a lot and she would be very quiet and then she would
17 bust out swearing at me and then she wanted a smoke and I
18 would not give her a cigarette.

19 Q. Did she ever try what you'd call a temper tantrum
20 and bang the cell bars?

21 A. No, sir. I was standing by the bars, she couldn't
22 get to the bars but she did throw a temper tantrum, sir, yes,
23 I would say so.

24 Q. Describe what occurred.

25 A. Well, she would bust out swearing and called me a

1 few choice names and then she would sit down on the floor.

2 Q Sit on the floor?

3 A Yes, sir.

4 Q Did she ever completely lay down on the floor?

5 A No, sir.

6 MR. ROBINSON: Your Honor, may I search for a document?

7 THE COURT: Yes.

8 (Brief delay.)

9 MR. ROBINSON: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 Q BY MR. ROBINSON: Officer Menzik, handing you
12 Defendant's Exhibit No. H and turning to that particular page --
13 first of all read to yourself that first paragraph.

14 A (Witness complied.)

15 MR. REMAKLUS: What page are you referring to, Counsel?

16 MR. ROBINSON: Officer Menzik, would you count exactly --
17 would you count so that we know which page it is?

18 THE WITNESS: Top of Page 8.

19 Q BY MR. ROBINSON: All right. Have you had an
20 opportunity to read that first paragraph?

21 A Yes, sir.

22 Q Now, are those the words of profanity and vulgarism
23 that were exuded by Carol Spaulding that morning?

24 A Yes, sir, they were.

25 Q After 6:00 a.m. did you have any further contact with

1 either Tom Creech or Carol Spaulding?
2 A. No, sir, I did not.
3 Q. Did you have further contact with Mr. Rivers?
4 A. Yes, sir.
5 Q. What was that? During that period of time at
6 breakfast at the El Rancho?
7 A. Yes, sir.
8 Q. And then what did you do after that breakfast?
9 A. I went home, sir, back to Glenns Ferry.
10 Q. And to this day have you had any further contact
11 with either Carol Spaulding or Tom Creech?
12 A. Mr. Creech, yes, sir.
13 Q. When and where?
14 A. Last week here in Wallace, sir.
15 Q. All right. And that's been your appearances here
16 as a witness in this matter since the 3rd day of October, 1975;
17 is that correct?
18 A. Yes, sir, last Friday.
19 Q. Yes.
20 A. Yes, sir.
21 Q. And other than your contact with Mr. Creech in
22 court sessions, has there been any out-of-court contact, you
23 and he in any kind of a conference or otherwise?
24 A. No, sir.
25 MR. ROBINSON: I have no further questions, Your Honor.

1 MR. REMAKLUS: You may step down. Thank you.

2 THE WITNESS: May I also be excused?

3 THE COURT: The witness would like to be excused.

4 MR. REMAKLUS: He may be so far as the State is concerned.

5 MR. ROBINSON: Defense has no objections.

6 THE COURT: You may leave if you wish to.

7 MR. REMAKLUS: Call Detective Freeman.

8
9 JACK FREEMAN,

10 a witness produced on behalf of the State, having been first
11 duly sworn, took the stand and testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. REMAKLUS:

15 Q State your name, please.

16 A Jack Freeman.

17 Q Where do you live, Mr. Freeman?

18 A Mountain Home, Elmore County, Idaho.

19 Q And what is your occupation, please.

20 A I'm a Detective with the Elmore County Sheriff's
21 Department.

22 Q And how long have you been so employed?

23 A Would be, with the Elmore County Sheriff's office,
24 November the 13th, be four years.

25 Q And you have prior experience, Mr. Freeman?

1 A Yes, sir, I do.

2 Q Would you describe it and the duration thereof?

3 A Yes, sir. I was Chief Deputy for Elmore -- correction,
4 Owyhee County Sheriff's office for approximately five months.
5 Prior to that I was with the Military Police, U.S. Air Force
6 for 20 years.

7 Q And have you had any particular special police
8 training; either in the Service or since, Mr. Freeman?

9 A Yes, sir, I have. Starting with the military, I
10 completed the Military Police School at Camp Gordon, Georgia,
11 this is starting back in '51; with numerous schools and annual
12 proficiency training in all phases of military police work
13 throughout the 20 years. Also some college courses through
14 Boise State, which was Junior College at the time. This was
15 prior to my retirement.

16 Then, since I have been out of the military and in
17 civil law enforcement, I've completed the Post Academy that
18 is required for State certification in law enforcement.

19 Presently, through training hours that attained,
20 currently eligible for the intermediate certificate. I have
21 attended and completed a school put on by the State for
22 narcotics investigation. I've attended and completed schools
23 put on Federal narcotics, again, for narcotics investigation;
24 another school put on by the State for identification of
25 narcotics and numerous other seminars plus fingerprinting school;

1 both basic and advanced.

2 Q And what is the "Post" that you mentioned?

3 A This is a five-week course put on in Pocatello at
4 the University, handled by an ex-State Police Officer and I'm
5 not sure of the other, to his qualifications, but this is,
6 basically, a nationwide program for insuring that all law
7 enforcement personnel are properly trained as far as their
8 particular states go and their activities and procedures.

9 Q Mr. Freeman, were you so employed on November 8, 1974?

10 A Yes, sir, I was.

11 Q And where were you living on that date?

12 A I was living in Mountain Home, Elmore County, Idaho.

13 Q Did you have occasion to go to Glenns Ferry, Idaho
14 in the early morning hours of that day?

15 A Yes, sir.

16 Q And what caused you to go down there?

17 A At approximately 3:10 a.m. the phone rang and I
18 was advised by the dispatcher that the Glenns Ferry police had
19 called for me to go down and assist them. I received the
20 barest of briefing on the telephone and advised the dispatcher
21 that they could brief me by way of radio while I was enroute to
22 Glenns Ferry.

23 Q And what did you do, if anything, as a result of that
24 phone call?

25 A I proceeded to Glenns Ferry; which is, basically,

1 an easterly direction from Mountain Home and approximately 26
2 miles.

3 Q And what time did you arrive in Glenns Ferry?

4 A I arrived in Glenns Ferry at approximately 3:40 a.m.

5 Q And where did you go?

6 A At the City Police Station in Glenns Ferry.

7 Q And who, if anyone, was there when you arrived?

8 A Patrolman George Menzik was present, Patrolman
9 Bill Hill -- or William Hill; both of which have testified here
10 today, a gentleman that was -- I later learned to be
11 Thomas Creech, a young lady by the name of Carol Spaulding and
12 another gentleman by the name of Rivers that testified, I
13 believe, yesterday.

14 Q Were you present when Mr. Rivers testified?

15 A Yes, sir.

16 Q And is the Tom Creech that you saw there that night
17 present in the courtroom?

18 A Yes, sir.

19 Q And would you designate who he is?

20 A Yes, sir. He's the gentleman sitting at the
21 defendant's table and to the right of Mr. Robinson. He has a
22 checked trousers, brown long-sleeve shirt.

23 MR. REMAKLUS: May the record show that he identified
24 the defendant, Thomas E. Creech?

25 THE COURT: Yes.

1 Q BY MR. REMAKLUS: What, if anything, did you do when
2 you arrived at the Glenns Ferry Police Station?

3 A I received brief, briefing from both Patrolman Hill
4 and Patrolman Menzik.

5 Q And who was present during that?

6 A The same people that I just got through naming,
7 sir.

8 Q What was the briefing that you received?

9 A Just basically what had transpired and what they
10 were doing at that particular time. They advised me that they
11 had already advised the three people of their rights and I was
12 told about the driver's license that wasn't, oh, issued to the
13 person that had had it.

14 Q Which driver's license are you talking about?

15 A This was -- I believe it was a driver's license in
16 the name of -- the name escapes me right now, sir.

17 Q And do you recall who had that driver's license?

18 A It was on the desk at the Police Station. At that
19 time I only know who they advised me that had it.

20 Q And who was that?

21 A Mr. Creech.

22 Q Okay. Please proceed, Mr. Freeman.

23 A Okay. They advised me that they had picked up a
24 pistol, this identification and advised me that the man that had
25 had this identification had advised them that his name was

1 Tommy Turner instead of what was shown on the card. They also
2 showed me a leather bag, a dark colored maxi coat and I asked
3 if the notification of rights had been in writing and I intended
4 to -- being I intended to ask the people some questions I also
5 wanted to advise the people of their rights and this I did.

6 Q How did you advise the people of their rights,
7 Mr. Freeman?

8 A This was from reading from the Notification of
9 rights card.

10 MR. REMAKLUS: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 Q BY MR. REMAKLUS: Handing you what has been admitted
13 into evidence as State's Exhibit 57, would you inspect that,
14 please.

15 A Yes, sir.

16 Q And did you -- is that the Notification of Rights
17 that you gave to the defendant, Tom Creech, at that time?

18 A Yes, sir.

19 Q And directing your attention to the signature line,
20 how did he sign that?

21 A Mr. Creech signed this as Tom Turner.

22 Q And would you describe the manner in which you gave
23 Mr. Creech, then known as Tom Turner, those rights, Mr. Freeman?

24 A This was read from Notification of Rights, mine
25 reading the same as the one that Mr. Hill read earlier.

1 Upon completion, using the rights card, I handed the
2 forms to the people, asked them to read it in its entirety and
3 then bringing special attention to the center of the form I
4 asked them if they thoroughly understood each of the rights
5 listed by the numbers, if they did understand those, to place
6 their initials on the line provided and if they understood the
7 form in its entirety, sign it at the bottom and giving the place,
8 date and time.

9 Q And that form was initialed by Mr. Creech as
10 Tom Turner, or "T.T."?

11 A Yes, sir.

12 Q Now, directing your attention to the lower left-hand
13 corner, does your signature appear thereon?

14 A Yes, sir, it does.

15 Q Do you have -- and the other signature witness, was
16 that signed in your presence?

17 A Yes, sir.

18 Q And was it signed by the defendant in your presence?

19 A Not the witness part. The signature part at the
20 lower right-hand corner of the form was signed by the
21 defendant with Patrolman Menzik signing the other witness part.

22 Q And were both those signatures put on in your
23 presence?

24 A Yes, sir.

25 Q And were the witness signatures affixed after the

1 defendant signed the form?

2 A. Yes, sir, almost immediately after.

3 Q. Thank you. Now, Mr. Freeman, I'm not sure that I
4 understand the time sequence correctly. But, were the rights
5 given soon after you arrived at the Glenns Ferry Police Station?

6 A. Yes, sir, pretty much so. After the discussion as
7 to what had transpired and then keeping in mind too, after my
8 arrival I was on the telephone for a period of time --

9 Q. Before you administered these rights?

10 A. Yes, sir, I believe so.

11 Q. Um-hmm. Then, after the rights were given and the
12 sheets signed by the defendant, what, if anything, did you do?

13 A. I talked to the defendants, just idle conversation
14 at that particular time, and then a Right to Search was used
15 and George Menzik and -- well, prior to the search, I believe
16 we were asked by the man on the other end of the telephone that
17 identified himself as Jim Maxwell to check particular items
18 of clothing for stains. So, a period of time was taken up
19 checking the clothes and, then --

20 Q. Could you tell me which clothes you checked for
21 stains?

22 A. I didn't really check any of them at that
23 particular point. Patrolman Hill and Menzik was involved in
24 this because we were checking clothes, actually, while I was on
25 the telephone. Mr. Maxwell wanted to know at that time if we

1 found any stains at all. So, I was carrying on a conversation
2 with him while they were checking.

3 Q And were their clothes present at the Police Station
4 at that time?

5 A Yes, sir.

6 Q And can you identify those clothes?

7 A I believe so.

8 Q And, handing you what's been marked for identification
9 as State's Exhibit 24, would you inspect the same, please,
10 Officer.

11 Have you seen that coat before?

12 A This appears to be the same coat.

13 Q And does that have a "Q" number marked on it?

14 A Yes, sir, it does.

15 Q Would you --

16 A This coat is marked with Q-17.

17 Q That number was not in it down there that night,
18 was it?

19 A No, sir, not to my knowledge.

20 Q Handing you what's been marked as State's Exhibit 25,
21 could you tell me whether or not you've seen that before?

22 A Yes, sir, I believe so.

23 Q And where did you see that bag before, Officer?

24 A This was a black bag that was in the City Police
25 Station upon my arrival in Glens Ferry.

1 Q And is that the same identical black bag?

2 A It appears to be. Also it has an evidence tag that
3 was attached to this upon my turning it over to Mr. Maxwell in
4 Mountain Home.

5 Q And did you take that into your possession at
6 Mountain Home -- I mean, at Glenns Ferry that night?

7 A This was a joint possession of the -- those items
8 in Glenns Ferry. When we started to leave Glenns Ferry with the
9 subjects in the car, we placed these items in the trunk of the
10 car, locking it, and then traveled to Mountain Home where I
11 believe it was Bill Hill and I picked these items out of the
12 trunk and took them upstairs where they stayed in our presence
13 the rest of the time.

14 Q And could you tell me which of these items that you
15 are referring to?

16 I would hand you an item marked with a Q-30. Are
17 you familiar with that? Can you tell us what it is, please.

18 A Yes, sir, if I might refer to my notes I can be
19 real positive on that.

20 Q Yes, if you would, please.

21 A Yes, sir, this is the jacket.

22 Q And would you describe it for me, please.

23 A Yes, sir. This being soiled blue Levi jacket that
24 was picked up in Glenns Ferry and placed in the trunk of my
25 car, ultimately transported to Mountain Home and then turned over

1 to Mr. Maxwell.

2 Q And how do you identify that as being the identical
3 coat?

4 A I placed a blue -- large blue dot under the left
5 collar of this Levi jacket.

6 Q And that dot is still present?

7 A Yes, sir.

8 Q Thank you. Handing you an Exhibit that is marked
9 Q-31, would you inspect that and tell me what it is, please.

10 A Yes, sir. This is a blue parka-type nylon jacket
11 with a hood, orange lining.

12 Q And do you have anything in your notes about that?

13 A Yes, sir.

14 Q Would you consult your notes, please.

15 A Yes, sir. My initials, "J.F." should be on the
16 back side of the size tag in this garment.

17 Q Would you please inspect the same.

18 A Yes, sir.

19 Q Do your initials so appear?

20 A Yes, sir, "J.F."

21 Q And where did you first see that coat?

22 A This is a coat that was handed to me by
23 George Menzik at Glenns Ferry on the morning of the 8th.

24 Q And do your notes, Officer Freeman, disclose any
25 other items that were handed to you on that date?

1 A. Yes, sir. This is on an inventory which I believe
2 is fairly complete of all items that I took charge of and
3 ultimately turned over to Mr. Maxwell from the Valley County
4 Sheriff's office.

5 Q. And what's the next item your notes disclose?

6 A. Well, starting with Item No. 1 is referred to in
7 my notes and an inventory was one pair of black trousers and on
8 these I placed my initials on the left pocket of this with the
9 initials "J.F."

10 MR. REMAKLUS: If I might have just a moment to consult
11 my notes.

12 (Brief delay.)

13 MR. REMAKLUS: I am wondering if Counsel would be
14 willing to stipulate that the trousers are listed in the
15 FBI report as Q-25?

16 MR. ROBINSON: I'd be willing, if the State's Counsel
17 wants to take the inventory prepared by Mr. Jack Freeman, mark
18 it in evidence and stipulate to its admission that he had a
19 prepared inventory and it will speak for itself and corresponding
20 with the FBI "Q" inventory.

21 Q. BY MR. REMAKLUS: Do you have such an inventory
22 that we could witness -- photograph and witness it?

23 A. The original of this report was given to
24 Jim Maxwell for his records at the time that I turned the
25 evidence over to him. This is a "burned off" copy.

1 Q And what do you mean by "burned off"? Is that a
2 photographic copy?

3 A Yes, sir.

4 Q Would that be identical with the original?

5 A Yes, sir.

6 Q And would you list the items -- would you identify
7 the items that you have listed on there, please.

8 MR. ROBINSON: If it please the Court, the items are not
9 in evidence, if we can have it marked, I'm willing to stipulate
10 its admission.

11 MR. REMAKLUS: The State's 58.

12 (State's Exhibit No. 58 marked for identification.)

13 MR. REMAKLUS: I would offer State's 58, Your Honor.

14 MR. ROBINSON: May I inspect it?

15 (Brief delay.)

16 MR. ROBINSON: No objection, Your Honor.

17 THE COURT: Fifty-eight will be admitted.

18 (State's Exhibit No. 58 admitted into evidence.)

19 Q BY MR. REMAKLUS: Handing you what's been marked
20 and admitted in evidence as State's Exhibit 58, Mr. Freeman,
21 were all of the items that you have marked on there turned over,
22 gathered by you at Glenns Ferry, Idaho on November 8th, 1974 and
23 transported to Mountain Home, Idaho and subsequently delivered
24 to Deputy Sheriff Maxwell from Valley County, Idaho?

25 A Yes, sir, with exception of some of the items of

1 clothing that the defendant was wearing when he was placed in
2 County coveralls, were marked and entered.

3 So, all of the items weren't gathered at Glenns Ferry,
4 but Glenns Ferry and Mountain Home, sir.

5 Q So, that would -- would your inventory include the
6 items gathered at Glenns Ferry plus the items gathered at
7 Mountain Home and delivered to Deputy Maxwell?

8 A Yes, sir. The only thing that I can think of that
9 was in that I failed to put on here was two boxes of .22 shells.
10 They don't appear on here and that is the only thing I can think
11 of.

12 Q Handing you what's been marked for identification as
13 State's Exhibit 25-A, would you inspect it, please.

14 Do you recognize the Exhibit?

15 A I recognize it as far as brand.

16 Q And what is the Exhibit?

17 A This is Exhibit 25-A, but it's two boxes of .22 ammo
18 and two boxes of .22 ammo was picked up in the evidence at
19 Mountain Home and also turned over to Mr. Maxwell. However, I
20 did not enter this on my list nor did I initial it.

21 Q Is this the brand that you recall?

22 A Yes, sir, to the best of my recollection.

23 Q And, handing you what's been marked in evidence as
24 State's Exhibits 22 and 23, would you inspect the same.

25 A Yes, sir.

1 today?

2 A. Nine-round clip that appears to be inserted in the
3 weapon, serial number 366934. There should also be ten rounds
4 of .22 caliber long rifle shells with a "C" appearing on each
5 of the shells.

6 Q Officer Freeman, handing you what's been marked for
7 identification as State's Exhibit 41, would you inspect the
8 same.

9 Would you describe the Exhibit, what you are looking
10 at and holding in your hand?

11 A. Yes. This is an envelope that ten rounds of
12 .22 caliber long rifle ammo was placed in. It was itemized on
13 the envelope what is in it, with my initials placed below it;
14 then this envelope had been sealed, using scotch tape and my
15 initials over the scotch tape. However, the envelope has been
16 opened at the opposite end since the last time I saw it.

17 Q And would you inspect the contents thereof?

18 A. Yes, sir.

19 Q What do those objects appear to be and how many of
20 them are there?

21 A. These appear to me to be .22 caliber long rifle
22 cartridges. They have a "C" on the primer end of them and there
23 are ten of them.

24 Q And do those appear to be the shells that you placed
25 in there on the night in question?

1 A. Yes, sir, same type shells.

2 Q Would you put them back in the envelope, please.

3 A. Yes, sir.

4 Q Would you consult your list again and see if you
5 have any other items; other than clothing or objects that we
6 have discussed.

7 A. Item No. 9 contains items that we haven't discussed.

8 Q What's Item No. 9 according to your inventory?

9 A. Item No. 9, according to this inventory, lists as
10 follows: -- this was items that was in the black bag I believe
11 -- yeah.

12 Partial pack of Kool filter kings, one pocket comb,
13 black; listed here as "one pot pipe"; one pocketknife; four,
14 .22 caliber long rifle shells; one turquoise pendant and chain,
15 silver; two books of matches; one red painted metal star; one
16 1965 quarter; one container tab, like would come off of a beer
17 or soda pop can and a pair of Poloaroid-type sunglasses.

18 Q Officer Freeman, would you open the State's Exhibit
19 24, the black bag and make a visual inspection of the contents
20 thereof.

21 A. (Witness complied.)

22 Q Do you recognize any of the items you have just
23 described as being in -- now being in the black bag?

24 A. Not yet, sir. No, sir, I don't, without dumping it
25 out. I might -- wait a minute, here's -- no, sir, I don't.

1 A. Yes, sir.

2 Q Directing your attention to when you were at the
3 Police Station in Glenns Ferry on the day in question and, if
4 you can remember where I interrupted you to have you enumerate
5 these items of evidence, I'd like to have you continue your
6 narrative of what you did, Officer Freeman.

7 A. I'm sorry, I don't remember.

8 Q I think I had asked you if you had given the
9 Miranda Warnings to the three individuals, including the
10 defendant, Mr. Creech.

11 A. Yes, sir.

12 Q And would you tell us what you did, if anything,
13 after that.

14 A. Starting in after the Miranda Warnings or starting
15 with --

16 Q Yes, starting after. I think you testified that
17 you gave the Miranda Warnings to all of them.

18 A. After the Miranda Warnings, really, the only
19 pertinent questions that I can think that I asked, I asked the
20 gentleman that had been identified to me as Tommy Turner, I
21 asked him again what his name was, where he lived. He gave me
22 the name "Tommy Turner" and gave me an address, I believe in
23 Quicksand, Kentucky.

24 I asked the girl where she lived and to the best of
25 my recollection she gave me an address of her mother's residence

1 in Lewiston.

2 Mr. Rivers -- there was some question as to what his
3 address was; whether he had a permanent address of his parents
4 or where he was currently staying and he gave me both of those.

5 When the stains -- what few stains had been located,
6 when that was relayed to Mr. Maxwell, the rights, went over a
7 few preliminary questions, that's when we decided to transport
8 them to Mountain Home. It was a little bit quieter -- or a
9 little better environment to talk to the people than in a
10 small one-room Police Station.

11 So, we did transport them to Mountain Home.

12 Q And how were the three individuals, Miss Spaulding,
13 Mr. Rivers and Mr. Creech, transported to Mountain Home?

14 A Mr. Creech and Miss Spaulding was placed in the
15 County-marked patrol car; Mr. Creech sitting on the right-rear,
16 fairly close to the girl, with Miss Spaulding sitting more in
17 the middle of the back seat near him.

18 Mr. Rivers rode up in his own car with
19 Patrolman Hill and that car followed me to Mountain Home.

20 Q Was there anyone with you besides the defendant and
21 Miss Spaulding?

22 A Yes, George Menzik, Patrolman, I had asked him to
23 come along and he was in the right-front passenger seat of my
24 vehicle.

25 Q And about what time of day -- was this -- or about

1 when did you leave Glenns Ferry?

2 A. This would have been around 4:30 in the morning.

3 Q. And how long did it take you to get from

4 Glenns Ferry to Mountain Home, Mr. Freeman?

5 A. Approximately 30 minutes.

6 Q. Now, during the time that you were driving -- you
7 were driving the car, didn't you say?

8 A. Yes, sir.

9 Q. Did you have an opportunity to observe what, if
10 anything, the defendant and Miss Spaulding were doing?

11 A. Just briefly when I would look into my rear view
12 mirror or have occasion to look at them or at Menzik.

13 Q. And what were they doing, if anything?

14 A. They were sitting in the back seat, they appeared
15 to me to be carrying on a normal conversation. I know
16 Menzik and I was talking, the police radio was on and, so, I
17 didn't really pay any attention to what they were doing;
18 except they were in the back seat talking and we were in the
19 front seat and we were traveling towards Mountain Home.

20 Q. Could you hear what they were saying?

21 A. Not what they were saying, no, sir.

22 Q. And with reference to the evidentiary items that
23 you have identified, what, if anything, did you do with them
24 when you were there at Glenns Ferry?

25 A. The items that had been picked up at Glenns Ferry

1 were placed in the trunk of the patrol car for transportation to
2 Mountain Home.

3 Q And were they transported at the same time and in the
4 same vehicle as the defendant and Miss Spaulding?

5 A Yes, sir.

6 Q And that was the one being driven by you?

7 A Yes, sir.

8 Q After you arrived at Mountain Home, where specifically
9 did you go in Mountain Home, Idaho?

10 A We entered Mountain Home off of U.S. -- or
11 Interstate 80 and coming into Exit 95, proceeded straight up
12 American Legion Boulevard and cut off at the junior high school,
13 it's on the corner of Tenth and American Legion, continued down
14 and pulled into the Sheriff's office door of the old Courthouse;
15 which is a basement-type door.

16 Q And then what did you do, if anything?

17 A We got out of the car, there was other people there.
18 It seems to me like there was other people there to assist us
19 in getting them out of the car; although I can't be positive at
20 that particular time. But, they were taken out of the car,
21 the evidence was -- or the items that had been picked up so far
22 were taken and we proceeded upstairs to the Commissioners'
23 Room; which at that time is one room being on the south end of
24 the Courthouse on the first floor and having a conference table
25 with numerous chairs in it, giving us a good place for

1 interviewing.

2 Q And after -- see, and you say you took them upstairs?
3 Would this -- the defendant and Miss Spaulding?

4 A Yes, sir.

5 Q And were the items that we've been discussing, were
6 they removed from the trunk of your car into the Courthouse?

7 A Yes, sir, and taken into the same room with us.

8 Q And then what, if anything, did you do?

9 A We were in the room for very few minutes, I believe,
10 before I asked one of the officers to take Miss Spaulding and
11 Mr. Rivers out and they took -- or the officer took those two
12 downstairs and I believe Mr. Creech, to the best of my
13 recollection, was the first individual that I talked to in that
14 room.

15 Q And who was present at that time?

16 A Mr. Hill was present during -- I would think most
17 of the conversation because I have on -- actually did the running
18 up the stairs for me for what I needed.

19 Q And this is when you and the defendant were upstairs?

20 A Yes, sir.

21 Q And did you question the defendant at that time?

22 A Yes, sir, talked with him.

23 Q And would you repeat your conversation?

24 A Well, I can't repeat it word-for-word. I can only
25 relate what I remember from the conversation and I'm not sure

1 if it was the first time that I talked with Mr. Creech that
2 morning.

3 I did talk to him twice in the room, Mr. Creech
4 being the first one, and I believe about the last one also that
5 I talked to.

6 During the course of one of these conversations he
7 advised me --

8 THE COURT: Just a minute. I'd like to see Counsel at
9 the bench a minute.

10 (Unreported conversation between Court and Counsel.)

11 THE COURT: I think we will just take a short recess at
12 this time, ladies and gentlemen. If you'll not discuss the
13 case and keep your minds open and abide by the admonition in
14 all respects.

15 (Jury left the courtroom.)

16 THE COURT: I'd just like you to summarize for me, if
17 you can, Mr. Remaklus, just yourself what you -- what testimony
18 you expect this witness to give as to statements by Mr. Creech.

19 MR. REMAKLUS: Your Honor, I'm going by the statement,
20 the report prepared by Officer Freeman and was introduced in
21 evidence last Friday at the Suppression Hearing as Defendant's
22 Exhibit D. It was my understanding that he testified
23 substantially to the contents of this report. I can ask the
24 witness if I may.

25 THE COURT: Go ahead.

1 VOIR DIRE EXAMINATION

2 BY MR. REMAKLUS:

3 Q Officer Freeman, directing your attention to last
4 Friday when we were at the hearing across the street, did you
5 testify as to conversations between you and the defendant at the
6 Courthouse there in Mountain Home?

7 A. Yes, sir.

8 Q And what did -- what were the substances of the
9 conversations that you had with him at that place?

10 Now, I want the ones that you gave us across the
11 street. Can you do that?

12 A. I believe the only ones that I gave across the
13 street and really the crux and just about the total amount that
14 Mr. Creech gave me was, he was questioned on where he had been
15 during this previous week and this was when he advised that they
16 had been in Spokane and took a route through Eastern Oregon and
17 down to Boise to some friend's house.

18 Then he went on to describe, you know, who the
19 friend was and where the friend lived.

20 Q And did you testify to this Friday?

21 A. I believe I did, sir.

22 THE COURT: Does that conform to your understanding,
23 Mr. Robinson?

24 MR. ROBINSON: That far, Your Honor, yes. I even
25 assumed, however, Your Honor, that the testimony about

1 conversations that this officer participated in would include the
2 final paragraph of his report that was in the Suppression Hearing,
3 our Defendant's Exhibit No. D.

4 MR. REMAKLUS: May I hand you my copy, Your Honor?

5 THE COURT: Yes.

6 MR. REMAKLUS: Maybe you'd recognize it.

7 THE COURT: Now, which paragraph?

8 MR. ROBINSON: The very last one on that first page,
9 Your Honor.

10 THE COURT: Do you agree that that was testified to the
11 other day, Mr. Robinson?

12 MR. ROBINSON: No, Your Honor, it was not testified to
13 the other day.

14 THE COURT: I didn't think it was either. What you are
15 saying, then, you are saying that neither one of these were
16 testified to?

17 MR. ROBINSON: No, Your Honor, the paragraph just above
18 the one the Court just read was testified to. As I recall this
19 final paragraph was not testified to, but I fully expected the
20 testimony of this officer to cover that final paragraph at this
21 time. I find, sequentially, that during the day, the 8th of
22 November, that to keep it in context because I know what the
23 Court's rule was in the Suppression Hearing; that we are going
24 to have the introduction of a statement, the voluntary statement
25 and this is explanatory as to how that was.

1 THE COURT: That hasn't been admitted yet.

2 MR. ROBINSON: No, it hasn't, sir.

3 THE COURT: I'm not going to rule on that until somebody
4 tries to bring that in. But, of course, that wasn't part of
5 that hearing and it will be subject to any new objections that
6 anybody wants to interpose at this point.

7 All right, we'll just take an additional five
8 minutes and then we'll resume.

9 (Recess taken.)

10 THE COURT: If Counsel haven't solved that, I'd make one
11 suggestion. I think, since any foundation for a statement that
12 Mr. Freeman took, if he took one, or got one; oral or
13 otherwise, would involve the same issues that were involved in
14 the Suppression Hearing on Friday, if Counsel are willing to
15 stipulate that the same evidence, as far as foundation could be
16 considered for purposes of any statements Mr. Freeman took, all
17 covered the same time period --

18 MR. ROBINSON: Yes, Your Honor.

19 THE COURT: -- I would accept that.

20 MR. ROBINSON: I would stipulate that that testimony
21 was given to the Court on the 3rd of October on the Suppression
22 Hearing could be considered by the Court in regards to
23 Mr. Freeman's contact with Tom Creech on the 8th day -- the
24 morning a.m. of the 8th day of November.

25 THE COURT: That would avoid having to repeat all that

1 foundation testimony on voluntariness.

2 MR. REMAKLUS: Yes, the State would so stipulate,
3 Your Honor.

4 THE COURT: All right. I think all I would require,
5 then, is have you make an offer of proof as to exactly what
6 statement he's going to make and then I'll rule on the
7 voluntariness of that.

8

9 VOIR DIRE EXAMINATION (Continued)

10 BY MR. REMAKLUS:

11 Q Mr. Freeman, just before our recess I had asked you
12 to repeat, as closely as you could, the conversation you had
13 with Tom Creech on the 8th day of November, 1974 at the
14 Mountain Home -- or Elmore County Courthouse.

15 A Are you ready for an answer now?

16 Q Yes.

17 A I'm sorry. Yes, at the basics of that conversation
18 was as pertain to the week during the week that the 8th fell
19 on and I was advised by Mr. Creech that they had been in
20 Spokane and him and Carol had been hitchhiking. They caught a
21 ride to Boise, they received only one ride and come by way of
22 Eastern Oregon.

23 Q And did you overhear any conversations later on
24 that same day between Officers Maxwell and Woodall and the
25 defendant, Thomas Creech?

1 A. No, sir. Once I finished with Mr. Creech that
2 morning and he was transported to the City Police Station, to
3 the best of my knowledge, the next time that I saw Mr. Creech
4 was sometime around 6:00 or shortly thereafter and I only got a
5 glimpse of him as they were taking him out for transportation,
6 apparently, to Valley County.

7 Q. Were you present when Officer Woodall was
8 interrogating, or taking a statement from the defendant?

9 A. No, sir.

10 MR. REMAKLUS: That would be as far as we'll go,
11 Your Honor.

12 THE COURT: You want to interpose an objection on
13 voluntariness to that statement, Mr. Robinson?

14 MR. ROBINSON: Yes, Your Honor, but my objection would
15 have to be couched upon the record as the Court heard it on the
16 3rd of October.

17 THE COURT: Yes. In other words, you have -- for the
18 record you want to interpose the same objection to this
19 statement that was the basis for your Motion to Suppress?

20 MR. ROBINSON: Yes, Your Honor.

21 THE COURT: That is what you are saying?

22 MR. ROBINSON: And in addition to that, Officer Menzik's
23 testimony that was given here a little while ago in regard to
24 Tom's condition as it was described.

25 THE COURT: All right. All right, based on Counsels'

1 stipulation that I can consider the record on the Motion to
2 Suppress the -- which was heard in connection with, I take it,
3 what has now been marked for this trial as Exhibit 55, is that
4 right?

5 MR. ROBINSON: Yes, Your Honor.

6 THE COURT: With that foundation I would rule that this
7 statement was also voluntary and competently made and after the
8 defendant had been adequately advised of his rights and
9 overrule the objection.

10 MR. ROBINSON: Your Honor, before you call the jury in,
11 could I step forward and get this Exhibit and take a quick
12 look at it? I have a question in my mind, it's right here.

13 THE COURT: Yes.

14 MR. ROBINSON: Fifty-five, I believe, and 56.

15 THE COURT: I think that's 55, yes.

16 MR. ROBINSON: Your Honor, may I deliver this to the
17 Court and --

18 THE COURT: If it's the same statement we had the other
19 day, I have a copy here.

20 MR. ROBINSON: Yes, this is the one that's marked as
21 Exhibit 55 and 56, Your Honor, just the first pages of 55. The
22 second page is 56, it contains -- and it has not been excised
23 in conformity, of course, with the Court's ruling during the
24 Motion of Suppression.

25 It contains, and still contains, all of the

1 objectionable material.

2 THE COURT: Yes, I'll note that and I don't want it
3 read to the jury or go to the jury until that material has been
4 excised in accordance with the Court's ruling.

5 All right, are we ready to proceed, then?

6 MR. REMAKLUS: I'm just wondering if we shouldn't --

7 THE COURT: Well, you are not probably going to offer it
8 with this witness anyway, are you?

9 MR. REMAKLUS: That's right.

10 THE COURT: You are going to offer it with -- after
11 Officer Woodall's testimony?

12 Let's go ahead with this witness.

13 MR. REMAKLUS: All right. Thank you, Your Honor.

14 (Jury re-entered the courtroom.)

15 THE COURT: Show the jurors are all present.
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1 DIRECT EXAMINATION (Continued)

2 BY MR. REMAKLUS:

3 Q Officer Freeman, just before the recess I'd asked
4 you whether or not you had a conversation there at Mountain Home
5 with the defendant, Tom Creech, and I had asked you -- you said
6 that you had.

7 Now, would you tell us as much of that conversation
8 as you recall?

9 A Yes, sir. The conversation was held with
10 Mr. Creech during the interview on the morning of the 8th and
11 the basics of the questions that I asked him was as pertained to
12 where he was during the earlier part of the week of the 8th.

13 Mr. Creech advised me that him and Carol had been
14 in Spokane, they had departed Spokane, I believe on Monday
15 evening hitchhiking and had gotten one ride from that area into
16 Boise and that they had came by way of Eastern Oregon and then
17 had stayed in Boise with some friends.

18 Q Now, Officer Freeman, I want to go back for when
19 you first arrived at Mountain Home -- excuse me, at Glenns Ferry
20 and met the defendant.

21 I would like for you to describe, as best you can,
22 his actions and demeanor as you observed him at Glenns Ferry,
23 Idaho.

24 A His actions and demeanor, as far as I remember, he
25 was nervous to the point that we find quite regular among people

1 that have been arrested. Mr. Creech's eyes were bloodshot and,
2 well, he was a little nervous. He wasn't extremely talkative nor
3 was he extremely quiet.

4 I learned that his way of speaking was a little
5 faster at that time than I have learned since then but that
6 was, basically, his demeanor and actions at that time.

7 Q Now, again, as you progressed from the time you went
8 traveling from Glenns Ferry up to Mountain Home, would you
9 explain -- describe his actions and demeanor during that time?

10 A During the trip or --

11 Q Yes.

12 A During the trip I couldn't really make much of a
13 determination of it. As I testified earlier, it appeared to me
14 that he and Miss Spaulding was carrying on a conversation in the
15 back seat of the car and this would be to the extent of it
16 because, keeping in mind the interior of a car at that time of
17 the morning is not the most lit up area in the area and I only
18 had the dash lights, console lights and radio lights on.

19 So, as far as being able to see any facial features
20 or any actions during the trip, I couldn't.

21 Q And did you -- were there any loud noises from --
22 emanated from the rear seat during the trip?

23 A Not that I recall, sir.

24 Q And were there any noises in the car? Anyone talking
25 loudly is what I'm getting at?

1 A. I don't remember any loud talking. There appeared
2 to be a conversation from the back, Menzik and I had talked a
3 little bit, the police radio was on, I don't remember any
4 particular transmissions over it except we did advise them
5 about what time we would be in and advising the office of when
6 we did arrive so they would know we were outside.

7 Q. Nothing unusual then?

8 A. No, sir, that I remember.

9 Q. Now, from the time that you arrived at Mountain Home
10 until the last time you saw the defendant, would you describe
11 his appearance, his actions and his conduct?

12 A. Well, this was, basically, the same. I think he
13 was very possibly a little more nervous once he got to
14 Mountain Home than in Glenns Ferry; it being a little bit
15 different atmosphere. But, his appearance and actions stayed
16 basically the same during the time that I observed him.

17 MR. REMAKLUS: You may examine.
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CROSS EXAMINATION

BY MR. ROBINSON:

Q Officer Freeman, it's my understanding that you had conversations, then, the early A.M. hours with both Tom Creech and Carol Spaulding at Glenns Ferry, were with them during transporting from Glenns Ferry to Mountain Home and short conversation with Tom Creech after arriving in Mountain Home; is that correct?

A Yes, sir.

Q Approximately how long was that conversation with Tom at Mountain Home?

A These conversations at Mountain Home was like the one in Glenns Ferry, they weren't very long in duration because we were figuring, oh, I would say maximum time spent with all three individuals that were picked up, from the time we arrived at Mountain Home until I was basically through with that and went to breakfast, it would have been roughly two hours, maybe a little bit more.

Q All right. And you went to breakfast at the El Rancho in Mountain Home approximately 9:00 a.m. of that day; is that correct?

A No, sir.

Q What time was it?

A This would have been sometime around 8:00 a.m. or -- shortly after Deputy Maxwell and Mr. Woodall arrived at

1 approximately 9:00 to 9:15 and we were just finishing breakfast
2 when they walked into the restaurant.

3 Q Who had gone to breakfast with you?

4 A Sheriff Winters, Mr. Rivers, George Menzik,
5 I believe Bill Hill was there, myself and I don't remember
6 whether the Chief Deputy went with us that morning or not.

7 Q Subsequent to that breakfast, did you have any
8 further conversations at all with Tom Creech?

9 A I talked with Mr. Creech twice that morning but just
10 the one conversation that I talked about is basically the only
11 conversation I had with Mr. Creech.

12 Q Subsequent to that breakfast you did spend an hour
13 in a question period with Carol Spaulding; is that correct?

14 A An hour?

15 Q From 10:00 to 11:00 or thereabouts prior to lunchtime?

16 A Ten to 11:00, after breakfast.

17 Q That's what I mean, after breakfast.

18 A Yes, after breakfast sometime around 9:15 to 9:30;
19 in that area. We did go back to the office and I sat in on an
20 interview with Miss Spaulding getting called out and back in.

21 Q All right. And during that period of time who was
22 present?

23 A Mr. Woodall, Mr. Maxwell, I believe Mr. Hill was in
24 there most, or at least part of the time and I was in part of
25 the time getting called back and forth.

1 Q And Carol Spaulding, of course?

2 A Yes, sir.

3 Q All right. Now, you had reduced your matter to an
4 official report, typewritten; is that correct?

5 A Yes, sir.

6 Q When?

7 A This was done ---

8 MR. REMAKLUS: I think I'm going to object to this line
9 of questioning as being outside the scope of the direct
10 examination.

11 THE COURT: Well, it seems to me it's preliminary. I'll
12 see where Mr. Robinson is going with it. Overruled.

13 MR. ROBINSON: May I assure the Court it is preliminary
14 and I'm not going to carry it that far.

15 Q BY MR. ROBINSON: Is that correct, Officer Freeman,
16 you did reduce to writing your activity to a written report?

17 A Yes, sir.

18 Q And when did you reduce it to a written report?

19 A That would have been the following morning when I
20 actually typed the report.

21 Q And the morning of November the 9th, 1974?

22 A Yes, sir.

23 MR. ROBINSON: All right. Your Honor, at this time I'm
24 going to complete my cross-examination of Mr. Freeman and ask
25 that he remain on call for defense's case.

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THE COURT: Fine,

MR. REMAKLUS: I have nothing further. Thank you,
Mr. Freeman.

THE COURT: You may step down.

I take it you can make arrangements with
Mr. Robinson when he expects you'll need to be present if you
want to leave.

MR. ROBINSON: Yes.

THE COURT: Call your next witness.

MR. REMAKLUS: May we have just a moment to confer?

(Brief delay.)

MR. REMAKLUS: Your Honor, because we wish to maintain a
continuity of the testimony at this time and our next witness
was going to take considerable time, I'm wondering, in view of
the two-day holiday, if we couldn't recess for the day.

THE COURT: Well, I don't see the importance of the
continuity, at least up to probably as far as we'll get today
with your preliminary matters and foundation things.

MR. REMAKLUS: Would you like for us to proceed?

THE COURT: Yes, I'd like you to proceed.

MR. REMAKLUS: Call Mr. Woodall.

1 WESLIE WOODALL,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q Would you state your name, please.

8 A Weslie Woodall.

9 Q And where do you live, Mr. Woodall?

10 A Post Falls, Idaho.

11 Q And what is your occupation?

12 A I'm an investigator for the State of Idaho
13 Department of Law Enforcement.

14 Q And how long have you been so employed?

15 A Two years and four months.

16 Q And how long have you been living over at Post Falls?

17 A Four months.

18 Q And where did you live before that?

19 A In Weiser, Idaho for two years.

20 Q That's down towards Southern Idaho; is it not?

21 A Yes, sir.

22 Q And have you had police experience, prior police
23 experience, Mr. Woodall?

24 A Yes, sir.

25 Q And would you describe that.

1 A. Well, Rupert Police Department in 1962. In 1964 I
2 was appointed Chief Deputy Sheriff at Cassia County at Burley,
3 Idaho.

4 In 1966 I went to Vietnam as a security supervisor
5 for a construction company. I returned to Idaho in 1967, I
6 was Chief of Police of Albion.

7 Q. Chief of what?

8 A. Police in Albion, Idaho.

9 Q. Yes, please go ahead.

10 A. And Deputy Sheriff at Minidoka County. Then I went
11 to work for the State of Idaho August 1st, 1973.

12 Q. And what are your duties for the State?

13 A. I work for the Bureau of Investigations; which we
14 are to enforce the liquor laws of the State of Idaho and also
15 aid and assist any local law enforcement in any criminal
16 investigations when our assistance is requested.

17 Q. Have you had any special schooling or training for
18 your occupation, Mr. Woodall?

19 A. Yes, sir.

20 Q. And could you tell us what that is?

21 A. I went to the Police Academy in Pocatello, Idaho at
22 Idaho State College, attended one week's school in Burglary
23 Investigation, one week's school in -- several schools and
24 seminars related to law enforcement and basic schools, advanced
25 police work schools and all phases of law enforcement.

1 Q And how many years now have you been engaged in
2 law enforcement?

3 A Thirteen.

4 Q Pardon?

5 A Thirteen.

6 Q I'm having difficulty hearing you, I'm sorry,
7 Mr. Woodall.

8 Now, directing your attention to the 5th day of
9 November, 1974, were you employed in your present position?

10 A Yes, I was.

11 Q And did you happen to be in the vicinity of Cascade,
12 Idaho?

13 A I was sent there, yes.

14 Q And how did you happen to go to Cascade, Idaho on
15 that day?

16 A The Chief of our Bureau called me on the telephone,
17 told me to report to Sheriff Lynskey at Cascade, Idaho to assist
18 in the homicide investigation.

19 Q And where were you when you received this word?

20 A Weiser, Idaho.

21 Q And about how far is that from Cascade?

22 A One hundred twenty miles.

23 Q And did you respond to this directive and go to
24 Cascade?

25 A Yes, sir.

1 Q And then did you have occasion to go to a place on
2 State Highway 55 at approximately one mile south of Donnelly,
3 Idaho?

4 A Yes, I did.

5 Q And what time of day did you arrive there, if you
6 know?

7 A At approximately 8:30.

8 Q Would that be in the evening, Mr. Woodall?

9 A Yes, sir.

10 Q And when you arrived at that spot, what, if
11 anything, did you observe?

12 A I observed Deputy Sheriff Maxwell, Sheriff Lynskey,
13 Deputy Sheriff O'Brien, the County Coroner, station wagon which
14 was from the funeral home in McCall, yourself, a couple other
15 people unknown to me.

16 Q And what else, if anything, was there at that time?

17 A An area was roped off on the west side of
18 Highway 15 with --

19 Q Would that be Highway 55?

20 A Highway 55, I'm sorry.

21 Q Yeah.

22 A The lights of Deputy Sheriff Maxwell's car were
23 directed to the barrow pit on the west side of the highway and,
24 looking in this barrow pit, I observed a blanket and sleeping
25 bag and with myself and other officers, we looked under these

1 blankets and observed the bodies of two male men.

2 Q Did you --

3 A People that were --

4 Q Officer Woodall, did you take photographs that night?

5 A Yes, I did.

6 Q Handing you what's been admitted into evidence as
7 Plaintiff's Exhibit 1-A, did you take that photograph?

8 A Yes, I did.

9 Q And which photograph is actually taken there at that
10 spot, the small one or large one?

11 A The small one was taken. This was an enlargement I
12 had made later.

13 Q And directing your attention to evidentiary item
14 1-B, did you take that photograph also?

15 A Yes, sir.

16 Q And how about 1-C?

17 A Yes, I took 1-C also.

18 Q And did you take the photograph that's been
19 admitted into evidence as State's 1-G?

20 A Yes, sir.

21 Q And did you also take the photograph admitted into
22 evidence as Plaintiff's Exhibit 1-J?

23 A Yes, sir.

24 Q Mr. Woodall, what did you do as -- after you arrived
25 at the scene and after you inspected the bodies with other law

1 enforcement personnel?

2 A. We gathered different items which we believed to be
3 evidence of what happened, or indicating possibilities of what
4 happened, put it in plastic bags, marked the bags and assisted in
5 making a drawing, measurements using a steel tape to pinpoint the
6 location of these bodies and assist in, at sometime later,
7 loading the bodies in a hearse for transportation.

8 Q. Now, Mr. Woodall, handing you what's been admitted
9 into evidence as State's Exhibit 3-A, would you look at the
10 Exhibit, please.

11 Do you recognize the Exhibit?

12 A. Yes.

13 Q. And would you tell us what it is, please.

14 A. This is a freehand drawing that was made on the night
15 of November 5, one mile south of Donnelly by Deputy Sheriff
16 James Maxwell.

17 Q. And there are measurements appearing thereon?

18 A. Yes, there is.

19 Q. Did you help in making those measurements?

20 A. Yes.

21 Q. And did you assist and advise in the preparation of
22 that --

23 A. Yes.

24 Q. -- Exhibit?

25 A. Yes.

1 Q Now, Mr. Woodall, have you had an opportunity to
2 observe State's Exhibit 3-A here on the board?
3 A Yes, I have.
4 Q And have you compared it with State's Exhibit 3,
5 the smaller sketch?
6 A Yes, sir.
7 Q And you believe this to be a fairly accurate
8 representation of the same scene?
9 A Yes, I do.
10 Q Thank you. About how long -- or would you tell us
11 what the weather was that night one mile south of Donnelly?
12 A Quite cold, somewhat overcast. It got very cold
13 before we left.
14 Q And you remember about what time it was you left
15 there?
16 A Oh, before midnight, after 11:00.
17 Q And did you say that you helped load the bodies into
18 the undertaker's station wagon?
19 A I was there and assisted, yes.
20 Q Um-hmm. And that -- and the undertaker is also the
21 Coroner of -- up there; is he not?
22 A Yes, sir.
23 Q Do you know who that is?
24 A Mr. Walker.
25 Q Yes. He testified here --

1 A. Yes.

2 Q. -- recently?

3 You were here when he testified; is that correct?

4 A. Yes.

5 Q. About how many hours were you there at the crime

6 scene that night?

7 A. Approximately three.

8 Q. What I want to ask you about, Mr. Woodall, was

9 other items of evidence that you may have helped to gather there.

10 Do you recall what they were at the crime scene?

11 A. Do you want me to relate each one?

12 Q. Yes.

13 A. There was pieces of plastic, they were white. There

14 was, oh, small pieces of glass --

15 MR. REMAKLUS: It's going to take me a moment to locate.

16 (Brief delay.)

17 Q. BY MR. REMAKLUS: Handing you what's been admitted

18 into evidence as State's Exhibit 7, Mr. Woodall, would you

19 describe the Exhibit?

20 A. A small pieces of plastic that were in the wide

21 graveled area to the west of the highway.

22 Q. And did you pick those up that night?

23 A. Yes, sir.

24 Q. Would you look at the -- how do you know that you

25 picked those up?

1 A. The time and date and my initials are on the card
2 showing what they are.

3 Q. And did you put them in there -- did you identify the
4 objects that night with that card?

5 A. Yes.

6 Q. Yeah, thank you. And -- oh, let's see what other
7 items did you help gather that evening, Officer Woodall?

8 Let me ask you this: Have you had a chance to
9 review the mass of items here before the Judge's bench?

10 A. As they were admitted, yes.

11 Q. And do you think you can specifically identify the
12 ones that you helped to gather that evening?

13 Maybe that's too general a question, too late in the
14 day. Did you --

15 A. There was several articles. There was a large
16 piece of asphalt that we picked up.

17 Q. Would you stand up and take a look at State's
18 Exhibit 6 and see if this appears to be the large piece of
19 asphalt?

20 A. Yes, it does.

21 Q. And to depart from the evidence gathering at the
22 scene that night, Mr. Woodall, after you left the crime scene
23 that evening did you have occasion to visit it again?

24 A. Yes.

25 Q. And when was that?

1 A. Following morning after daylight.

2 Q. And when you went back to the crime scene, what,
3 if anything, did you observe? Just tell us the condition of
4 the scene, please.

5 A. The area was the same. It had been secured by being
6 roped off and a Deputy Sheriff stayed there. We saw other --
7 we picked up some more articles in the ditch where the bodies
8 have -- had been removed.

9 Q. Did you take any photographs there the next morning?

10 A. Yes.

11 Q. Handing you what's been admitted into evidence as
12 State's Exhibit 1-M, I ask you to look at that and determine
13 whether or not you took that photograph?

14 A. Yes, I did.

15 Q. And what does it tend to portray?

16 A. It shows some marks in the graveled area going from
17 the highway -- or from -- close to the highway to the ditch
18 where the bodies were located.

19 Q. And do you -- did you inspect those carefully,
20 Mr. Woodall?

21 A. Yes.

22 Q. Do you have an opinion as to what caused those
23 marks?

24 A. Yes.

25 Q. And what is that?

1 A. It was where the bodies were dragged across the
2 gravel. It was, apparently, they had been dragged through this
3 gravel leaving these marks.
4 Q. Did the marks lead up to where the bodies were when
5 you took the pictures?
6 A. Yes, they did.
7 Q. Thank you. Handing you Exhibit 1-L, would you tell
8 me, did you take that photograph?
9 A. Yes, I did.
10 Q. And can you explain to me what it -- the purpose of
11 your taking that one?
12 A. It shows Deputy Maxwell standing bent over,
13 apparently looking at the marks in the gravel. There was some
14 dark red areas which we believed to be blood that he may have
15 been looking at.
16 Q. And when was that photograph taken by you?
17 A. The following morning.
18 Q. Who accompanied you to the death scene that next
19 morning?
20 A. Deputy Maxwell.
21 Q. How much time did you spend there, Mr. Woodall?
22 A. Probably an hour, about -- approximately.
23 Q. And then when you left there what, if anything, did
24 you do with reference to this matter?
25 A. I think from there we went to Donnelly, interviewed

1 some people trying to determine what had happened, or if anyone
2 had seen anything happen.

3 Q And then, after that, what did you do, Mr. Woodall?

4 A Next days was spent interviewing and talking to
5 people from McCall, Donnelly, New Meadows.

6 Q Did you have occasion to view the automobile
7 portrayed in State's Exhibit 28-A and 28-G?

8 A Yes, I did.

9 Q And when was the first time you saw that car?

10 A During the early morning hours of the 9th, I believe.

11 Q And where was that?

12 A In the Phillips 66 service station at Cascade.

13 Q And did you make an inspection of the vehicle at
14 that time?

15 A Yes.

16 Q Then what was the next thing you did, if anything,
17 with reference to the investigation of this case?

18 A Traveled an area south of Cascade below Cougar
19 Mountain Lodge where Deputy Maxwell and I recovered some papers
20 from over the riverbank down in the rocks.

21 Q And do you know about where that was?

22 A It was at a turnout close to mile post 94, I believe.

23 Q Is that on the North Fork of the Payette River
24 there in the canyon?

25 A Yes.

1 Q Then what else did you do, Officer Maxwell -- or
2 Woodall?

3 A Continued interviewing people almost continuously
4 then for all that day, most of that night and most the next day.

5 Q Now, did you have occasion then to go to Mountain
6 Home, Idaho with Deputy Maxwell?

7 A Yes, I did.

8 Q When did you go down there?

9 A November the 8th.

10 THE COURT: We will take our evening recess at this time.

11 MR. REMAKLUS: Thank you.

12 THE COURT: Just be seated a minute, I've got to explain
13 something to the jury so they will know who to blame for this.

14 I know you won't appreciate this, ladies and
15 gentlemen, but we're going to have to take a two-day recess and
16 the reason is because of a Statute of the State of Idaho, not
17 because the Counsel or parties or myself want to keep you tied
18 up in the motel for two days with doing nothing.

19 But, I'm going to read this Statute to you so you'll
20 understand what we're talking about.

21 Section 1-1607 of the Idaho Code provides that "No
22 court can be operated nor can any judicial business be
23 transacted on any day enumerated in Section 73-108, Idaho Code."

24 Section 73-108, Idaho Code says, in effect, these
25 are the days that it's referring to in this other statute,

1 holidays, every Sunday and I'm going to skip, they've got
2 New Year's Day, Washington's birthday, Decoration Day,
3 Independence Day, first Monday of September, Labor Day, and we
4 come to the second Monday in October; which is Columbus Day.

5 So, every Sunday and Columbus Day; which is the one
6 we're faced with now is what is referred in the Statute as a
7 "Nonjudicial day during which no court can be opened nor any
8 judicial business transacted."

9 So, I guess we'll have to obey the law. So, we'll
10 be in recess until next Tuesday at 9:30.

11 If you will abide by the admonition during this recess
12 and cooperate with the Bailiffs in carrying out their oaths to
13 have you abide by this admonition please.

14 (Recess taken.)
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1 WALLACE, IDAHO, TUESDAY, OCTOBER 14, 1975, 9:00 A.M.

2
3
4 THE COURT: This was the time scheduled for the taking
5 up of the matter of the claimed immunity by the witness
6 Carol Spaulding.

7 I want the record to reflect that at her request
8 I've appointed Mr. William Boyd of Kellogg to represent her in
9 this matter. The record may reflect that Mr. Boyd is present --

10 MR. BOYD: Yes, sir.

11 THE COURT: -- with Miss Spaulding.

12 MISS SPAULDING: Yes.

13 THE COURT: Mr. Boyd, have you had opportunity to
14 consult with Miss Spaulding in this matter?

15 MR. BOYD: Yes, I have, Your Honor.

16 THE COURT: Very well. I'm going to proceed by
17 requiring the State to state what testimony they are going to
18 seek to elicit from Miss Spaulding so that Mr. Boyd may be able
19 to more properly advise her and advise the Court of his
20 position in this matter.

21 MR. REMAKLUS: Your Honor, we have presented Mr. Boyd
22 with a transcript of taped interviews made with Miss Spaulding
23 at the Idaho State Penitentiary in Boise to Deputy Sheriff
24 Jim Maxwell and to me and, as well as a transcript of a typed
25 interview made by Miss Spaulding to Mr. Thomas and me at

1 Women's State Prison in Nevada.

2 In addition thereto, we are having prepared a
3 transcript of Miss Spaulding's testimony upon a plea of guilty
4 to the charge upon which she is now imprisoned. As soon as we
5 have received that we shall immediately present Counsel and the
6 Court with a copy of that. This is the area in which we will
7 inquire of Miss Spaulding.

8 THE COURT: If I understand correctly, these transcripts
9 of statements you've taken from her that you furnished to
10 Mr. Boyd, covered the entire area you intend to go into here as
11 a witness?

12 MR. REMAKLUS: Yes. We would not attempt to go beyond
13 that.

14 THE COURT: On the other hand, do you intend to go into
15 all the matters covered by those statements?

16 MR. REMAKLUS: Probably not, Your Honor.

17 THE COURT: Does Mr. Boyd know which ones you do not
18 intend to go into?

19 MR. REMAKLUS: Well, we don't have the transcript of the
20 plea of guilty proceeding and we have not yet gone down, line by
21 line with Mr. Boyd. We will have to do that, Your Honor.

22 THE COURT: Mr. Boyd, do you feel at this point that this
23 information you've received -- well, let me ask you first, do you
24 concur that you have received these items that Mr. Remaklus
25 represents have been furnished to you?

1 MR. BOYD: Yes, Your Honor. I've been furnished a copy
2 of a transcript of an interview in Carson City, Nevada on
3 June 17, 1975 and an interview in Boise on April 8, 1975.

4 It will be our position, Your Honor, that
5 Miss Spaulding is entitled to the privilege against
6 self-incrimination as to all the matters set forth -- that is,
7 if those transcripts are an indication of where the Prosecution
8 is going and where the Defense would be going on cross-examination
9 we will take the position that it's privileged.

10 THE COURT: Before I ask you to make any showing in that
11 regard, let me just ask you, do you feel you are sufficiently
12 advised of the area the State intends to cover with her as a
13 witness to make a showing at this time in support of your
14 claim of privilege?

15 MR. BOYD: Yes, assuming that -- that is the attorneys
16 for the State have assured me that the testimony will be no
17 more broad from their viewpoint than is contained in these
18 transcripts and I feel sufficiently advised to make a showing
19 if that's the scope of the examination.

20 THE COURT: Yes. Very well.

21 Well, frankly, I intend to limit them to the scope
22 they revealed to you so that will solve that.

23 I understand that it is the burden of the witness
24 claiming the privilege to make a showing and does present some
25 of a problem for that witness, as I understand, because in that

1 citations of authority or not. I'm aware of the fact that the
2 Court has had this question in mind and has done some briefing
3 on the matter.

4 We'll be relying on -- well, we've also considered,
5 Your Honor, the fact that Carol Spaulding has pled guilty to
6 a violation of 18-205, Idaho Code; the Accessory Statute, I
7 take this position.

8 Even with that in mind, for the reason that I'm
9 concerned about that Idaho case, State against Hall,
10 86, Idaho, 63; that has to do with double jeopardy and I am
11 mindful of the more recent United States Supreme Court case,
12 Turner against Arkansas, 92 Supreme Court, 2096. We can't take
13 the chance that our Idaho Supreme Court is not still the
14 controlling law so I think, essentially, that's our position,
15 Your Honor.

16 THE COURT: Just so I understand clearly what your
17 position is, Mr. Boyd, in all respects; on this last point you
18 make, I understand your point on these other crimes, but on this
19 last point I assume what you are actually referring to is in
20 view of the fact that the crime she actually pleaded guilty to
21 was an accessory after the fact and not as a principal and
22 involved a fact occurring after the alleged crime on trial here.
23 She may be still prosecuted as a principal for the main crime
24 on trial?

25 MR. BOYD: Yes, Your Honor, that there is that danger.

1 Now, I've confined our showing just to the facts
2 between Lewiston and Glenns Ferry, Idaho. Now, I see it's my
3 understanding that the Court is entitled to take into
4 consideration in the showing various facts and I see, by recent
5 newspaper articles, that Mr. Robinson is somehow, if the
6 newspaper quotes him correctly, intends to show various facts
7 all across the United States.

8 But, I don't think the Court wants to hear my
9 argument on that at the present time.

10 THE COURT: I take it -- I don't particularly care to
11 hear argument, but I would like to know what your position is
12 going to be if -- so we can get all this laid out right now.

13 Assuming this situation develops that the State
14 calls Miss Spaulding and limits their scope of direct
15 examination very narrowly so that Mr. Robinson would not be
16 permitted to cross-examine to get into other areas and
17 Mr. Robinson has, then, selected to call Miss Spaulding as his
18 own witness for the defense and endeavors then to get into some
19 of these other areas you just alluded to, what would be your
20 position at that point?

21 MR. BOYD: Our position will be that she will claim the
22 privilege against self-incrimination in that Mr. Robinson, if
23 I understand correctly from what I read in the newspaper, is
24 contending crimes were committed in other states that could,
25 perhaps, involve Miss Spaulding.

1 THE COURT: All right, thank you.

2 MR. ROBINSON: In view of those comments, Your Honor, I'd
3 like to place this on the record: That Mr. Boyd did contact me
4 by phone Sunday evening after his appointment and I told him
5 that I would make my entire files available to him for his
6 appraisal regarding his court appointment chores and task and
7 tentatively make an appointment for 8:00 a.m. yesterday morning.

8 During the entire day my phone was constantly
9 monitored; whether I was there or not and there was never a
10 recontact. So, Mr. Boyd has not made himself available for
11 information from my files and they are still available if he
12 cares to inspect them.

13 I do intend to call Carol Spaulding in the defense's
14 case regardless of what restriction the Court places upon the
15 defense in cross-examination; limited to that scope covered in
16 direct examination, Your Honor.

17 THE COURT: State care to respond to Mr. Boyd's showing?

18 MR. THOMAS: Your Honor, we would take this position and
19 it is based on the case that we have recently found entitled
20 In Re: Master Key litigation. I don't have the citation but I
21 will provide it to the Court and Counsel at a later point.

22 THE COURT: What's the name?

23 MR. THOMAS: In Re: Master Key litigation. It's a
24 Federal case and strikes me that it was sought by the Eighth
25 Circuit Court of Appeals. In any event, it's our impression that

1 the material covered in these interviews that Mr. Boyd has
2 referred to and in Miss Spaulding's sworn testimony at the time
3 of the plea of guilty is exculpatory as far as she is concerned
4 with respect to this particular crime.

5 It's our intention to limit the direct examination
6 of Miss Spaulding to those matters relating to the murders of
7 two men near Donnelly, two crimes that Mr. Creech is charged
8 with and circumstances of the arrest of the defendant and
9 Miss Spaulding near Glenns Ferry and facts related to those
10 two incidents.

11 Master Key litigation case suggests that, as far as
12 a witness is concerned, witnesses not open to unlimited cross
13 examination after having testified to facts of this kind.

14 Under those circumstances we don't see that there's
15 any threats of self-incrimination if Miss Spaulding were to
16 testify to facts which she's already testified to once under
17 oath and which she has given in these two interviews that have
18 been referred to.

19 Under those circumstances it does not appear to us
20 that she's in any danger of incriminating herself because the
21 defendant is not entitled to go beyond those facts on cross
22 examination into anything that might be incriminating. I might
23 just say for the record that we don't have any evidence of any
24 other incriminating material that is solid, or credible, and we
25 have no plan and know of no plan to prosecute Miss Spaulding for

1 any other crime.

2 THE COURT: Let me ask you, Mr. Thomas, Mr. Boyd has
3 asserted that the privilege extends not only to directly
4 incriminating testimony but any facts that might link her in a
5 chain of evidence to prove crimes.

6 Now, if she is placed right at the scene of these
7 alleged homicides, in the immediate scene and present personally
8 at the scene of that homicide; isn't that a very strong link that
9 would incriminate her, at least in a chain of evidence if she
10 were later prosecuted as a principal in that?

11 MR. THOMAS: That would tend to be so were it not for the
12 fact that in her statement she has contended that the killings
13 were a surprise to her; that she didn't know they were coming.

14 THE COURT: As I alluded to, Mr. Boyd, the problem we
15 have in this kind of a determination, though we can't -- you
16 know what the testimony previously was, but we can't foretell
17 what her testimony in this trial is going to be and that's what
18 we're concerned about, her being incriminated on, is her
19 testimony given in this trial, not being incriminated on the
20 statements you have there.

21 She can't be compelled to reveal what that testimony
22 is because that, per se, would incriminate her if the testimony
23 were going to be of that nature. So, we have to sort of work
24 in the dark about what her anticipated testimony is and decide
25 it, basically, on arguments here.

1 While I recognize these statements would serve to
2 impeach her if she changes that testimony, she isn't, really,
3 precluded from changing it and the incrimination we're talking
4 about is the incrimination that would come from her future
5 testimony, not incrimination from these statements.

6 MR. THOMAS: Well, that is correct, Your Honor, we do not
7 yet have the transcript of her testimony under oath at the --
8 statements which she made under oath at the time of her guilty
9 plea and I'm assuming they are consistent. We'll know specifically
10 when we receive that information.

11 But, I would simply take the position again that I
12 think having once given testimony under oath is -- may lay out
13 these facts, she has either waived the privilege by doing that,
14 consistent with the holding in the Master Key case; or else she
15 doesn't have any concern for immunity because she stated under
16 oath that she doesn't have any -- she was not involved in this
17 crime. Her direct examination would be limited to those facts.

18 THE COURT: I understand there is, perhaps, some conflict.
19 Doesn't the great weight of authority say that testimony under
20 oath in a prior proceeding is not a waiver?

21 MR. THOMAS: There is a great deal of authority. I
22 haven't had that opportunity, frankly, to research it extensively
23 enough to know what the majority view was and the minority view
24 on the point.

25 THE COURT: All right. I'll let you reply, Mr. Boyd, if

1 you wish to make a reply.

2 MR. BOYD: I think anything further, Your Honor, as to the
3 contention of the State that there was some type of a waiver of
4 her privilege because of former testimony, I'm simply not
5 prepared to say anything because I haven't had a chance to see
6 a transcript of that yet. So, I would just be spouting
7 ignorance as to testimony at a prior proceeding. It had been
8 my understanding of the law that we're concerned about testimony
9 at the proceeding and that testimony at a prior proceeding is
10 not a waiver.

11 But, I wouldn't represent to the Court that I have
12 recently researched that.

13 THE COURT: This one point that Counsel are reserving here
14 on the prior testimony at her guilty proceeding on the accessory
15 charge as constituting a waiver of the claim of
16 self-incrimination, and I feel that is an important and material
17 point because, of course, if she's waived then she has no right
18 to claim it at this proceeding.

19 But, apart from that issue of whether there has been
20 a waiver, I'm inclined to feel that she is in danger of
21 incriminating herself and I would sustain her claim of privilege,
22 unless the State is prepared to grant her immunity.

23 MR. THOMAS: Well, in that event, Your Honor, and still
24 reserving the waiver question, assuming the Court decides
25 against us on the waiver point, we would move that the Court

1 order Miss Spaulding to testify as to these matters under a
2 grant of immunity.

3 MR. BOYD: Then, Your Honor, may I inquire if the State
4 would be proceeding under 1114 or 1115?

5 THE COURT: I was just checking those Statutes,
6 Mr. Boyd. As I understand, 1114 would involve an agreement
7 between the State and the witness. I'm not -- I don't think the
8 State would be in controlling position there unless
9 Miss Spaulding were willing to enter into an agreement with them
10 for immunity. If she isn't willing to agree with them and enter
11 into a written agreement for immunity, then they would have to
12 move, under 1115; which would require the Court's intervention.
13 I can't answer that question.

14 MR. BOYD: I can represent that the State certainly is
15 not agreed with me on behalf of my client to any immunity in
16 any way, shape or form. So, I'm assuming they are talking
17 about 1115.

18 MR. THOMAS: That's correct, Your Honor.

19 THE COURT: Well, since you've just been brought into
20 this, Mr. Boyd, by appointment, I want to accommodate your
21 schedule. I'd like to get the waiver question finally resolved
22 before we proceed with the formality of immunity if that's
23 to be granted.

24 MR. BOYD: Can we get it solved when I see that
25 transcript, sir?

1 THE COURT: When do you expect to have the transcript in
2 your hands, Mr. Thomas?

3 MR. THOMAS: We were unable to talk to the Reporter this
4 morning when we called, Your Honor, because he was in court.

5 The message was left that we did need it urgently
6 and we would expect to have it today or tomorrow; follow up on
7 that. But, I can't give a definite answer at this point.

8 THE COURT: Would you know what time tomorrow?

9 MR. THOMAS: I don't because I don't know just what
10 schedule we would have to follow in getting it up here. We
11 would have to have it hand-carried by someone; whether that would
12 involve flying it up or driving it up, I'm not sure.

13 MR. BOYD: I can be prepared as far as the briefing goes,
14 today.

15 THE COURT: Would you need -- I take it you wouldn't
16 need this transcript for your briefing.

17 MR. BOYD: No, sir.

18 THE COURT: If your briefing might resolve -- you need it
19 to support your position.

20 MR. BOYD: Yes.

21 THE COURT: Would you be available, under your schedule,
22 Mr. Boyd, perhaps to come in this evening after our evening
23 recess at some time between 4:30 and 5:00 to take this matter
24 up; or will that give you enough time?

25 MR. BOYD: No, I'll be available.

1 THE COURT: All right, we'll take this matter of law as
2 far as waiver, then, following our evening recess today.

3 So Counsel will be fully advised, if it is
4 determined, as a matter of law, that there, of course, has been
5 a waiver that will conclude the matter. If it's been determined
6 that there has not been a waiver then, as I understand the
7 Statute, the State would be required to make the request for
8 immunity in writing and, then, the Court would have to rule on
9 that immunity.

10 I frankly see no reason at this point not to grant it
11 if the State makes a proper request in writing under the
12 Statute. If it's granted, I would order Miss Spaulding then to
13 testify, if Counsel can be prepared for both alternatives.

14 MR. BOYD: Yes, sir.

15 THE COURT: So, I think the end result is that in either
16 case I think it appears likely that Miss Spaulding will be
17 ordered to testify based on the representations of the State
18 because, if the Court determines, as a matter of law, there has
19 been a waiver, then she wouldn't be permitted to claim the
20 privilege and would have to testify in that circumstance. If
21 the Court determines there has not been a waiver she would be
22 entitled to claim the privilege because, as I understand the
23 State is prepared to offer her immunity under the Statute and
24 I see no reason not to grant that if the State properly requests
25 it.

1 MR. BOYD: I understand that.

2 MR. REMAKLUS: Yes. Thank you, Your Honor.

3 THE COURT: All right, as far as this matter, then, it
4 will be continued until after our evening recess to take up
5 the waiver matter.

6 Counsel prepared to proceed before the jury at this
7 time?

8 MR. REMAKLUS: Yes, Your Honor.

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: Bring in the jury.

11 (Jury entered the courtroom.)

12 THE COURT: Let the record show the jurors are all
13 present.

14 Proceed with Mr. Woodall, then.

15 MR. REMAKLUS: Yes, thank you.

16
17 WESLIE WOODALL,
18 produced as a witness on behalf of the State, having been
19 previously duly sworn, took the stand and testified further
20 as follows:

21

22

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1 DIRECT EXAMINATION (Continued)

2 BY MR. REMAKLUS:

3 Q Mr. Woodall, before the evening recess last Saturday
4 I think I asked you if you had had occasion in connection with
5 this matter to go to Glenns Ferry -- or to Mountain Home, Idaho.

6 Did you have occasion to do that?

7 A Yes. I went to Mountain Home, Idaho.

8 Q And on what day?

9 A November the 8th, 1974.

10 Q And were you with anyone else when you went down
11 there?

12 A Deputy Sheriff Jim Maxwell.

13 Q And where is he from?

14 A Valley County, Cascade.

15 Q And how did you travel with him?

16 A In Deputy Sheriff Maxwell's County patrol vehicle.

17 Q Do you remember what time you and Deputy Maxwell
18 arrived in Mountain Home?

19 A At about 8:30 a.m.

20 Q And upon your arrival in Mountain Home what did you
21 first do?

22 A We stopped at the El Rancho. We learned, by radio,
23 that the investigating officers, Detective Freeman and
24 Patrolman Hill and -- were at the El Rancho for breakfast. We
25 stopped there and had coffee with them and conferred about the

1 case,

2 Q And then what, if anything, did you do?

3 A We went from there to the Elmore County Sheriff's
4 office.

5 Q And who did you go over there with?

6 A Deputy Sheriff Maxwell, Detective Freeman, Officer
7 Hill. I think Sheriff Winters of Elmore County was there.

8 Q And after you arrived at the Sheriff's office, what
9 happened?

10 A We were taken upstairs to a -- I believe Commissioners'
11 meeting room and went over items of clothing and articles that
12 were taken from the Rivers vehicle and from Carol Spaulding
13 and Tom Creech.

14 Q And then what?

15 A We itemized these articles then we interviewed
16 Carol Spaulding in that room.

17 MR. REMAKLUS: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 Q BY MR. REMAKLUS: Mr. Woodall, handing you what's
20 been marked as State's Exhibits 22 and 23, would you identify
21 it, please.

22 A This is a .22 caliber, high standard Sport King
23 semiautomatic weapon, pistol.

24 Q Have you seen it before?

25 A Yes.

1 Q And when was the first time you saw it?
2 A On November the 8th in the Elmore County Sheriff's
3 office.
4 Q And is that on the day in question?
5 A Yes.
6 Q And how do you identify that as being one and the
7 same pistol?
8 A I observed the broken grip, I scratched my initials
9 on it somewhere but I can't see it right now; also by serial
10 number.
11 Q Did you make a record of that serial number when
12 you were down there, Mr. Woodall?
13 A I entered it in my notes.
14 Q And is that the serial number you entered in your
15 notes?
16 A Yes.
17 Q And what -- how about Exhibit 23?
18 A This is the holster that the weapon, pistol, was
19 in at the time I saw it.
20 Q And what, if anything, did you do with the pistol
21 and the holster?
22 A Just looked at them and Officer Maxwell took them
23 into his possession.
24 Q Thank you. Handing you what's been marked for
25 identification as State's Exhibit 24, would you inspect it,

1 please.

2 A. It's a long dark blue coat with a hood.

3 Q. And have you seen it before?

4 A. Yes.

5 Q. And where and when?

6 A. In the Elmore County Courthouse on November the 8th,
7 about 9:30 in the morning.

8 Q. And how do you know that to be the same coat,
9 Mr. Woodall?

10 A. It appears to be.

11 Q. Fine. And it was there on the morning in question?

12 A. Yes.

13 Q. Handing you what's been marked for identification as
14 State's 25, would you state what it is and whether or not you
15 have seen it before?

16 A. This is a black purse, or bag, that was in the
17 Commissioners' Room on November 8, Elmore County Courthouse.

18 Q. Thank you. And handing you what's been marked for
19 identification as State's Exhibit 25-A, could you look at the
20 Exhibit and say whether or not that you can identify it?

21 A. These appear to be two boxes of .22 caliber
22 ammunition that was in the purse at the time we saw the purse
23 in the Elmore County Sheriff's office -- or Courthouse.

24 Q. And that was on the same day we're talking about?

25 A. Yes.

1 Q Handing you what's been marked for identification
2 as State's Exhibit 41, would you inspect the Exhibit, please.

3 A This is nine .22 caliber rounds of ammunition.

4 Q Can you state -- excuse me, Mr. Woodall.

5 A They appear to be the same ones that were in the
6 Elmore County Sheriff's office on November 8.

7 Q Now, was that up in the Commissioners' Room that
8 you testified to?

9 A Yes.

10 Q Fine. Handing you what's been -- has a number Q-30
11 on it, would you look at this Exhibit and tell us what it is
12 and whether or not you've seen it before?

13 A This is a blue denim jacket, apparently the same
14 one that was on the desk, or table, in the Commissioners' Room,
15 Elmore County Courthouse on November the 8th, 1974.

16 Q And Exhibit marked Q-31, Mr. Woodall.

17 A This is a blue nylon pea coat-type coat with a hood.
18 It appears to be the same one that I observed in the Elmore
19 County Sheriff's office in the Commissioners' Room on
20 November the 8th, 1974.

21 THE COURT: Mr. Remaklus, I'm sure the record already
22 reflects it, but I'm wondering if we could make it perfectly
23 clear that the record would reflect what you've referred to as
24 "Q-30 and 31" and also Q-25 and 29 are all part of trial
25 Exhibit 47?

1 MR. REMAKLUS: Yes, this is correct, Your Honor.

2 THE COURT: Maybe keep the record clear if we could
3 refer to both the trial exhibit and the "Q" numbers.

4 MR. REMAKLUS: Apparently this tag has fallen off the
5 Exhibit, Your Honor. What's the number on the tag, Mr. Woodall?

6 THE WITNESS: Number 47.

7 Q BY MR. REMAKLUS: This is the Exhibit you referred to
8 just a moment ago? Would you reaffix it in some manner to the
9 bag.

10 A. (Witness complied.)

11 Q Mr. Woodall, would you remove the rest of the
12 contents of the bag. Would you describe what you are holding?

13 A. It's a shirt, has Q-28, some initials inside.

14 Q And have you observed that shirt before?

15 A. Yes.

16 Q Where was that?

17 A. In the Elmore County Courthouse, Commissioners' Room
18 on November the 8th, 1974.

19 Q And also remove the remaining contents of the bag.

20 A. Pair of dark gray trousers.

21 Q Is there a "Q" number on the trousers, Mr. Woodall?

22 A. I don't -- yes, Q-25 and some initials.

23 Q And have you seen the Exhibit before?

24 A. Yes.

25 Q And where was that?

1 A. In the Elmore County Courthouse, Commissioners' Room,
2 November the 8th, 1974.

3 Q Is there anything else in the bag, Mr. Woodall?

4 A. Yes. Two white, or gray socks, one marked Q-32
5 and the other marked Q-33.

6 Q And do you know whether -- do you recognize them?

7 A. They appear to be the same as what was on the table
8 in the Elmore County Courthouse on November 8, 1974.

9 Q Thank you.

10 A. Two shoes marked Q-27 and Q-26.

11 Q Have you seen them before?

12 A. Yes.

13 Q And where was that?

14 A. In the Elmore County Courthouse on November 8, 1974.

15 Q Are there any more contents to the bag, Mr. Woodall?

16 A. There's a belt marked Q-29.

17 Q And have you seen the belt before?

18 A. Yes.

19 Q And when and where was that?

20 A. In the Elmore County Courthouse, the Commissioners'
21 Room on November 8, 1974.

22 Q Do you recognize that as being the belt --

23 A. Yes.

24 Q Thank you. Would you -- let's put the items back in
25 the bag marked State's Exhibit 47 so we keep them straight.

1 A. (Witness complied.)

2 Q. Thank you, Officer Woodall.

3 Mr. Woodall, after checking the physical evidence you
4 just testified to, what, if anything, did you do at that time?

5 A. Carol Spaulding was brought to the same Commissioners'
6 Room and we started an interview with her.

7 Q. And who was present at that -- during that interview?

8 A. Myself, during part of it, Patrolman Hill from
9 Glenns Ferry during part of it, Detective Jack Freeman during
10 part of it, Deputy Sheriff Maxwell.

11 Q. And was this the statement of Miss Spaulding, you
12 say?

13 A. Yes.

14 Q. Was that reduced to writing?

15 A. I started taking some notes on what she was saying,
16 but, as far as I know, it wasn't reduced to writing. I didn't
17 do it.

18 Q. And where then did this conversation, or
19 interrogation, take place?

20 A. In the Commissioners' Room in the Courthouse,
21 Elmore County.

22 Q. And what was said during that?

23 A. Miss Spaulding related incidents and direction of
24 travel during the past several days and places stayed.

25 Q. And would you tell us --

1 MR. ROBINSON: Your Honor, at this point may we get a
2 timeframe as to which of the several interviews that this was?
3 Was it the one right at 9:30 or the one between 11:00 and 12:00?

4 THE COURT: Well, what's your objection? I don't -- if
5 you have an objection, state it.

6 MR. ROBINSON: The objection, Your Honor, is it's
7 difficult for me to come forth and abide by what the Court has
8 ordered previously in regard to the several conversations, unless
9 I know specifically which one of the conversations it was within
10 what timeframe.

11 THE COURT: Well, your only objection is to foundation,
12 then?

13 MR. ROBINSON: Yes, Your Honor.

14 THE COURT: You have no other objection?

15 MR. ROBINSON: No other objection, Your Honor.

16 THE COURT: All right, I'll sustain the objection and
17 require you to lay a further foundation.

18 Q BY MR. REMAKLUS: About what time of day was this,
19 Mr. Woodall?

20 A About 10:00 a.m., I believe.

21 Q And do you know whether or not -- had you had on
22 that day in question other conversations with Miss Spaulding?

23 A No.

24 Q This was the only one you had with her?

25 A Up until then, yes.

1 Q Would --

2 A Up to this point.

3 Q And this was your first conversation with her on
4 that day?

5 A At the time we went into the Courthouse she was in
6 a cell and I may have spoken to her then. But, as far as
7 asking any questions or talking to her, I didn't; other than,
8 maybe, a greeting or something like that.

9 Q So this would have been your first conversation
10 with her?

11 A Yes.

12 Q Would you tell us what was said?

13 A We asked her where she had been, where she had
14 came from. She related that she had been in Lewiston, had
15 gotten a ride with two men, they had traveled through
16 Grangeville from Lewiston. They came through -- they came
17 down the highway to McCall.

18 Q Did she describe whether or not she was with anyone
19 during this time?

20 A Her and Thomas Creech were together.

21 Q Please proceed.

22 A She stated "Tom shot those guys". She stated that
23 she had ran from the car, he had told her to come back or he
24 would shoot her too. She was shown some photographs of a blue
25 and white '56 Buick. She identified this vehicle as being the

1 one that her and Tom had gotten a ride in at Lewiston and had
2 ridden in. She referred to a place where "Tom shot those guys
3 and put the bodies in the ditch."

4 She then stated she had got in the car and proceeded
5 on towards Boise; that the car had run out of gas; that they
6 had slept for awhile in the car; that after the car had run out
7 of gas they tried to push it into the river. They couldn't
8 push it and, then, they hitchhiked on to Boise; that they were
9 in Boise a couple days and that --

10 MR. REMAKLUS: Just a moment, please.

11 Q BY MR. REMAKLUS: Can you tell us whether or not
12 Miss Spaulding related the manner in which they departed from
13 Boise?

14 A She stated a guy that they had stayed with gave
15 them a ride in a vehicle out to the rest area, just out of
16 Boise.

17 Q Go ahead, please, Mr. Woodall.

18 A And, then, they were picked up and given a ride to
19 Glenns Ferry and they were arrested there.

20 Q Do you recall whether or not Miss Spaulding related
21 any details of the arrest?

22 A I don't recall.

23 Q Do you recall whether or not Miss Spaulding related
24 any details concerning any of the evidentiary objects that you
25 have just testified to?

1 A. I don't recall.

2 Q What -- then what happened next, if anything,
3 Mr. Woodall?

4 A I was --

5 MR. ROBINSON: Objection to the vagueness of the question,
6 Your Honor, what happened next. From what point?

7 THE COURT: Yes, I'm going to sustain the objection.

8 Q BY MR. REMAKLUS: After your interview with
9 Miss Spaulding that you've just testified to, tell us what,
10 if anything, you did after that.

11 A During this I was in and out of that room several
12 times, called to the telephone two or three times and afterwards
13 she was taken back downstairs, put back in a cell. She was
14 dressed in blue coveralls. I think we went to lunch, we were
15 waiting for a court appearance for her, waiting for the Court
16 to be ready for her to appear.

17 Q Did you then -- following that what did you do, if
18 anything?

19 A I went to the Police Station after lunch in
20 Mountain Home.

21 Q And when you arrived at the Police Station in
22 Mountain Home, about what time of day was this?

23 A About 1:30.

24 Q That would be in the afternoon, Mr. Woodall?

25 A Yes.

1 Q And who was there?

2 A Myself, Deputy Maxwell, Patrolman Hill. There was
3 two or three Mountain Home policemen that I didn't know. I
4 didn't know by name. There was some newspaper people. I don't
5 recall by name anybody else.

6 Q At that time, or at that place, was the defendant
7 at the Mountain Home Police Station?

8 A Yes, he was in a cell back in the office, from a
9 meeting room.

10 Q And did you go back to the cell?

11 A Yes, I did.

12 Q And who was present at that point?

13 A Myself, Deputy Sheriff Maxwell; a Mountain Home
14 officer had the keys.

15 Q Did you enter the cell?

16 A Yes.

17 MR. ROBINSON: Your Honor, for sake of continuity and
18 such, before this portion of the testimony comes out, could we
19 request a recess at this time for convenience? We have been in
20 session a little over an hour.

21 THE COURT: Yes, we started before you came in, ladies
22 and gentlemen, so we'll take a ten-minute recess. If you
23 remember the admonition, don't discuss the case and keep your
24 minds open.

25 (Recess taken.)

1 THE COURT: Show the jurors are all present.

2 Go ahead.

3 Q BY MR. REMAKLUS: Mr. Woodall, I think before the
4 recess you testified that you had gone to a cell in the
5 Mountain Home Police Department where the defendant, Mr. Creech,
6 was; is this correct?

7 A That's correct.

8 Q And who was with you at that time?

9 A Deputy Sheriff Maxwell and a Mountain Home Police
10 Officer, the name is not known to me.

11 Q And what, if anything, did you do at that point?

12 A Took Tom Creech out of the cell, handcuffed to
13 Deputy Sheriff Maxwell, we went into an office in the
14 Mountain Home Police Station, a lieutenant said "Go ahead and
15 use this office" and we went in there.

16 Q And who was present at that time?

17 A Deputy Sheriff Maxwell and myself and the Mountain
18 Home officers.

19 Q And anyone else? Was the defendant there?

20 A Yes, and Thomas Creech.

21 Q Um-hmm. Do you know about what time of day that
22 was?

23 A Just a little bit before 2:00.

24 Q Be in the afternoon?

25 A Yes.

1 Q And, now, what, if anything, did you do at that point,
2 Mr. Woodall?

3 A First thing I done was took a Miranda Warning card
4 out of my pocket and read the contents on it to Tom Creech.

5 Q And do you have that card?

6 A Yes.

7 Q And do you have it with you now?

8 A Yes.

9 Q And could you read it to the jury, please.

10 A Says "Miranda Warning".

11 "You have the right to remain silent. Anything you
12 say can and will be used against you in a court of law. You
13 have the right to talk to a lawyer and have him present with you
14 while you are being questioned. If you cannot afford to hire
15 a lawyer one will be appointed to represent you before any
16 questioning if you wish. You can decide at any time to exercise
17 these rights and not answer any questions, or make any
18 statements."

19 Q And do you know whether or not the defendant made
20 any response to that?

21 A I asked him if he understood these rights to each
22 one of them and if he did want to talk to us. He stated he
23 would talk to us.

24 Q And, then, what did you do?

25 A Set down at a desk in the office, told Tom to sit

1 down. At that time he asked for a cigarette and he was given
2 one.

3 Q Mr. Woodall, handing you what's been marked for
4 identification as Plaintiff's Exhibit No. 55, could you identify
5 that for us, please.

6 A This is a form that Deputy Sheriff -- or
7 Detective Freeman had gave to me earlier and it says
8 "Notification of Rights" on the top of it.

9 Q And is that the form that he gave to you there at
10 Mountain Home that day?

11 A Yes, it is.

12 Q What, if anything, did you do with that?

13 A I took it with me into the office when I interviewed
14 Tom Creech.

15 Q Did you read it to him?

16 A Yes, I did.

17 Q And what, if anything, did he do with reference to
18 the form?

19 A He initialed each question in the center of the
20 page. Where it says "Waiver" there is six statements with a
21 blank behind each statement and the initials "T.E.C." were
22 put there by Tom Creech.

23 Q And did he sign that Waiver?

24 A Yes, he did.

25 Q And was that signed in your presence at the time

1 we're talking about?

2 A. Yes, sir.

3 Q. And were there witnesses to that?

4 A. Yes.

5 Q. And who are the witnesses?

6 A. Myself and Martin J. Maxwell.

7 Q. And you witnessed the defendant's signature on the
8 Waiver?

9 A. Yes.

10 Q. And did Mr. Maxwell witness it in your presence?

11 A. Yes, he did.

12 MR. REMAKLUS: I would offer Plaintiff's Exhibit 55,
13 Your Honor.

14 MR. ROBINSON: No objection to 55, Your Honor.

15 THE COURT: Let me look at it just a minute, Mr. Remaklus.

16 MR. REMAKLUS: Yes, Your Honor.

17 MR. ROBINSON: My understanding, Your Honor, 55 is just
18 the first sheet?

19 MR. REMAKLUS: That is correct.

20 THE COURT: Just for the record, was -- since it is
21 stapled to some more pages what are the other pages? Are they
22 56?

23 MR. REMAKLUS: Yes.

24 MR. ROBINSON: Yes, they are stapled. Right at the bottom
25 of the second page, Your Honor, 56.

1 THE COURT: All right, 55, just being the top sheet of
2 several sheets, will be admitted, then.

3 MR. REMAKLUS: Thank you.

4 (State's Exhibit No. 55 admitted into evidence.)

5 MR. REMAKLUS: May I read this into evidence at this
6 time, Your Honor?

7 THE COURT: Yes.

8 MR. REMAKLUS: "Notification of Rights". I am reading
9 from State's Exhibit 55.

10 "Before we ask you any questions, you must
11 understand that you have certain rights under both the Idaho
12 and United States Constitutions. You do not have to talk to us.
13 You have the absolute right to remain silent. Anything you
14 say can and will be used against you in Court. You have the
15 right to talk to a lawyer for advice before we ask you any
16 questions and to have the advice and presence of a lawyer even
17 if you cannot afford to hire one. You have the right to
18 request the services of the Public Defender at any time if you
19 cannot afford to hire a lawyer, and such Public Defender will
20 be assigned to represent you at public expense. If you want a
21 lawyer present or if you wish to consult a lawyer, you have the
22 absolute right to remain silent until he is present or has
23 been consulted, whether he be the Public Defender or a lawyer
24 of your own choosing. If you wish to answer questions now
25 without a lawyer present, you have the right to stop answering

1 questions at any time and remain silent.

2 "Waiver". Now, in parentheses it says:
3 "(Place initials at the end of each statement below only after
4 you completely understand what such statement means.)

5 "I have read the above statement of my rights and
6 understand that:

7 "1. I have the absolute right to remain silent."
8 There is a blank and the initials have been written in with
9 what appears to be black ball-point pen "TEC".

10 "2. Anything I say can and will be used against
11 me in Court." Another blank, the initials "TEC" written in.

12 "3. I have the right to the advice of a lawyer
13 before answering any questions." Again a blank with the
14 initials written in "TEC".

15 "4. I have the right to have a lawyer present
16 during any questioning." Another blank, again the initials
17 written in "TEC".

18 "5. I have the right to a lawyer even if I cannot
19 afford one, and if I cannot afford one, I may use the services
20 of the Public Defender at any time and at public expense."
21 Again a blank and the initials "TEC".

22 "6. If I choose to answer any questions without
23 the advice of a lawyer or without a lawyer being present, I
24 have the right to stop answering questions at any time and
25 remain silent." Again a blank and the initials "TEC" written in.

1 "I can read and write the English language, or if I
2 cannot, the above rights were explained to me by an
3 interpreter who speaks the language I can read and write. I
4 am willing to answer questions and make a statement. I do not
5 want a lawyer. I understand and know what I am doing. No
6 promises or threats have been made to me, and no pressure of any
7 kind has been used against me."

8 This is signed in what appears to be black ball-point
9 pen, "Tom E. Creech", "Mountain Home, Idaho."

10 On the line marked "Place". On the date line,
11 "Nov. 8, 1974." On the time space "1400 HRS".

12 Signed as witnesses, "Weslie L. Woodall" and
13 "Martin J. Maxwell".

14 Q BY MR. REMAKLUS: Mr. Woodall, after Mr. Creech
15 signed the Waiver of Rights what, if anything, did you do?

16 A I took some forms that I had furnished by the
17 State of Idaho and filled out the top of what -- the heading on
18 these forms, which is headed "Voluntary Statement".

19 Q Now, I have handed you what's been marked for
20 identification as State's Exhibit -- may I see it, please.

21 State's Exhibit 56. Is this Exhibit No. 56 appearing
22 on the first page of the forms that you just described?

23 A Yes, it is.

24 Q And what, if anything, did you do with these forms --
25 or, Exhibit 56?

1 A In black ball-point pen I filled in the blanks where
2 it says "Date" I put "Nov. 8, 1974".

3 Q Just tell us what you did here with reference to
4 that.

5 A I filled in the blanks. I then read the top
6 typewritten statement to Thomas Creech and started an interview
7 with him.

8 Q Now, tell me whether or not anything occurred about
9 the time you started this part of the interview?

10 A Tom Creech stated "I did it, I did it, I did it"
11 spontaneous statement.

12 Q Then what did you do, if anything?

13 A Told Tom to slow down, to back up. To talk so I
14 could write this down.

15 Q And would you describe -- well, who was present at
16 this time, Mr. Woodall?

17 A Deputy Sheriff Maxwell.

18 Q And who else?

19 A A Mountain Home Police Officer.

20 Q And the defendant?

21 A And Tom Creech.

22 Q Would you describe the manner in which you took this
23 statement?

24 A I started out by asking Tom Creech a question.
25 From then on it was trying to get him repeat, or slow down where

1 I could write, basically, what he was telling me.

2 Q And how long a period did this -- of time -- did
3 this take, "Mr. Maxwell"?

4 A Approximately two hours.

5 Q And were the same people present during all of the
6 interview?

7 A No. The Mountain Home Police Officer left,
8 Glenns Ferry Police Officer Hill came in, then Deputy Sheriff
9 Maxwell was called out, handcuffs were taken off Tom Creech and
10 Mr. Maxwell. At that time we left the handcuffs off Mr. Creech.

11 Q When --

12 A Mr. Hill stayed in.

13 Q At what point in time were the handcuffs removed,
14 Mr. Woodall?

15 A Within five minutes after we went into the office.

16 Q Were the handcuffs removed from Mr. Creech during the
17 time that he made this statement to you?

18 A Yes.

19 Q Would you proceed -- could you describe Mr. Creech's
20 demeanor and actions at this time?

21 A He was a little bit tired looking, he was a little
22 bit shaky, his eyes were slightly bloodshot. He appeared to be
23 nervous.

24 Q Now, at the completion of the time you took the
25 statement, what, if anything, did you do?

1 A. Went back to Page No. 1, told Tom to read it. I had
2 left some blank lines in it, I put a line diagonally across these
3 lines, told Tom to put his initials on this line to show that
4 nothing had been added that he hadn't told me, told him to read
5 Page No. 1, if there's anything he wanted corrected, or anything
6 that was different than what he was actually telling me and
7 believed, to change it and initial any cross-out or any
8 changes.

9 Q. And were there any changes on -- did you do the same
10 thing with Page 2?

11 A. Yes, we did, and went through, right though Page 7.

12 Q. Page-by-page?

13 A. Page-by-page.

14 Q. And did he initial and make some corrections as you
15 went along?

16 A. Yes.

17 Q. And did he then sign the voluntary statement on the
18 bottom of each of the seven pages?

19 A. Yes, he did.

20 Q. Was that done in your presence?

21 A. Yes.

22 Q. And does your signature appear as a witness at that
23 time?

24 A. Yes, it does.

25 Q. Did you witness each page?

1 A. Yes.

2 Q And there is another signature there. Whose
3 signature is that?

4 A. William S. Hill.

5 Q Was Mr. Hill present during all of the interview?

6 A He came in just after the interview started, just
7 about the first page of the interview he came in.

8 Q And was he present during the time that you checked
9 all seven pages of the statement after he filled it out?

10 A. Yes.

11 Q And then did he witness each page?

12 A. Yes, he did.

13 Q Now, on the printed portion appearing on each page,
14 was that printed by you personally, Mr. Woodall?

15 A. The hand printing was by me, yes.

16 Q And the initials, who were they put on by?

17 A. Thomas E. Creech.

18 MR. REMAKLUS: I would offer State's Exhibit 56,
19 Your Honor.

20 MR. ROBINSON: May I see it, Your Honor?

21 Your Honor, at this time we interpose the objection
22 as covered in the previous hearing before this Court on the
23 suppression of this particular document, for all material
24 appearing on Page 1, to the middle of Page 5, sir, down to the
25 line which commenced "I was in the service".

1 That basic objection is as to the voluntariness of
2 the statement because of the then condition of Thomas Creech.
3 I further interpose objection from the line "I was in the
4 service" to the balance of this statement, the latter part of
5 Page 5, all of Page 6 and all of Page 7 with the unnumbered
6 attachment, basically for the reasons stated to the Court on the
7 3rd day of October in the Suppression Hearing and ruled by the
8 Court at that time; the same were not admissible.

9 If I may, Your Honor --

10 THE COURT: Based on the Court's ruling at the
11 Motion to Suppress, I'm going to overrule the objection as to
12 voluntariness. I'll sustain the objection to the portion
13 which you speak to of deleted, beginning there with Page 5 at
14 the point indicated. I would also offer at this time to
15 sustain an objection and delete a portion of Page 4, again on
16 the same basis that I deleted the part requested on Page 5,
17 about the last 13 lines, if you want to look at that,
18 Mr. Robinson.

19 MR. REMAKLUS: The last how many lines?

20 THE COURT: Approximately 13, beginning with the words
21 "a couple".

22 MR. REMAKLUS: Yes.

23 MR. ROBINSON: Upon consideration of what the Court has
24 stated, Your Honor, yes, at this point we would interpose the
25 same objection as to the last three pages for that area on

1 Page 4 that the Court has pointed out.

2 I would assume, Your Honor, that would also include
3 the first four lines on Page 5?

4 THE COURT: Yes, but I would leave in, following those
5 first four lines until we get down to the point you've
6 previously referred to.

7 MR. ROBINSON: I'm sorry, Your Honor.

8 THE COURT: I would overrule the objection as to the
9 remaining portion of Page 5 after the first four lines down to
10 the point that you have already referred to.

11 MR. ROBINSON: Yes, Your Honor, I intended that that
12 would stay in.

13 THE COURT: Yes, that would stay in.

14 All right, subject to those deletions I will
15 admit the Exhibit.

16 (State's Exhibit No. 56 admitted into evidence.)

17 MR. REMAKLUS: Your Honor, I would like to read the
18 Exhibit into evidence but I'm fearful that I haven't followed
19 all of the Court's instructions and I don't want to read stricken
20 portions.

21 THE COURT: All right, I'll bracket, if it's all right
22 with Counsel, I'll bracket in red pen the portions deleted and
23 then let Mr. Robinson look at it to see that he concurs before
24 you read it.

25 MR. ROBINSON: Very fine, Your Honor.

1 MR. REMAKLUS: I'd appreciate it.

2 THE COURT: For the record, I would add that the Court
3 has just added the red brackets in red pen that appear on the
4 Exhibit and I have also written the word "End", E-n-d, on the
5 point at Page 5 that the State is supposed to stop.

6 Show that to Mr. Robinson.

7 MR. REMAKLUS: Yes.

8 THE COURT: Does that conform to your understanding?

9 MR. ROBINSON: That conformed.

10 THE COURT: You may read.

11 MR. REMAKLUS: I would ask to present a photocopy so, if
12 I start to read something that I shouldn't, if the Court would
13 stop me, please.

14 THE COURT: Yes.

15 MR. REMAKLUS: I have one more question to ask the
16 witness, Your Honor.

17 Q BY MR. REMAKLUS: Mr. Woodall, directing your
18 attention to the printed matter at the top of the first page,
19 was that read aloud to the defendant before the statement was
20 taken?

21 A Yes, it was.

22 MR. REMAKLUS: Thank you.

23 This is entitled "Voluntary Statement".

24 "Date, November 8, 1974; Place, Mountain Home
25 Police Department, Mountain Home, Idaho; Time Started, 2:00

1 blank .

2 "I, the undersigned, Thomas Eugene Creech, am 24
3 years of age, having been born on September 9, 1950 at
4 Dayton, Ohio. I now live at" blank.

5 "I have been duly warned and advised by
6 Weslie Woodall, a person who has identified himself as an
7 Investigator and Police Officer that I do not have to make any
8 statement at all, nor answer any questions or do anything that
9 might tend to go against me or incriminate me in any manner,
10 and that any statement I make, can and will be used against me
11 on the trial or trials for the offense or offenses concerning
12 which the following statement is herein made.

13 "I was also warned and advised of my right to
14 the advice and presence of a lawyer of my own choice before or
15 at any time during my questioning or statement I make, and if I
16 am not able to hire a lawyer I may request and have a lawyer
17 appointed for me, by the proper authority, without cost or
18 charge to me.

19 "I do not want to talk to a lawyer, and I hereby
20 knowingly and purposely waive my right to the advice and presence
21 of a lawyer before and during any questioning or at any time
22 before or while I voluntarily make the following statement to
23 the aforesaid person, knowing that anything I say can and will
24 be used against me in a court or courts of law.

25 "I declare that the following voluntary statement is

1 made to the aforesaid person of my own free will without promise
2 of hope or reward, without fear or threat of physical harm,
3 without coercion, favor or offer of favor, without leniency or
4 offer of leniency, by any person or persons whomsoever."

5 The initial "Q." The initials "WW: Tom we are
6 investigating a double murder that took place about five days
7 ago in Valley County in Idaho.

8 "Tom: I did it, I did it, I did it."

9 Then the word "crying" in parentheses --

10 THE COURT: In quotes.

11 MR. REMAKLUS: Thank you.

12 "Q" and the initials "JM: When" and then there is
13 a space with a line written through it with the initials "TEC"
14 written in there.

15 The next printed portion, "I killed those two guys.
16 I need help." Then another line, initials "TEC".

17 Resuming, now:

18 "We went to" and a word is crossed out and the
19 initials "TEC" appear above it. So, it reads, "We went to
20 Lewiston from Spokane got a ride with two guys Wayne and Tom.
21 I shot him three times only shot Tom once. Carol didn't know
22 I was going to do it. We stopped to go to bathroom. Wayne
23 tried to rape Carol. He put his hands on her tits. We stopped
24 and Carol got out I" -- and then a slash and the initials "TEC".

25 "We stopped by" something and the initials "TEC" --

1 "side of the road and there was a ditch.

2 "Question WW: What time and day was this. Sunday
3 about 1 o'clock. That is 1:00 in the morning. That would be
4 1:00 a.m. Monday morning."

5 "I have read each page of this statement consisting
6 of seven pages, each page of which bears my signature, and
7 corrections, if any, bear my initials, and I certify that the
8 facts contained herein are true and correct. I further certify
9 that I made no request for the advice or presence of a lawyer
10 before or during any part of this statement, nor at any time
11 before it was finished did I request that this statement be
12 stopped. I also declare that I was not told or prompted what
13 to say in this statement.

14 "This statement was completed at 4:00 p.m. on the
15 8th day of November, 1974, Tom E. Creech, Page 1 of 7" written
16 with the initials "TEC" written under that.

17 Witness signature, "Weslie L. Woodall, witness"
18 a signature "William S. Hill".

19 On Page 2 the printed matter is crossed out, two
20 lines, and initials "TEC" written across and written in there
21 "Page 2 of 7" and then the number "2".

22 "Right after they picked us up they sold a battery
23 charger for some gas. We took Highway 95 when we left
24 Lewiston. It was dark at Grangeville. In Whitebird we stopped
25 in a bar and sold a coat for some beer. Tom said a big fat

1 lady. It was Budweiser beer. Cans. We stopped later and I got
2 some cigarettes at a service station. Kools. That is where
3 Wayne played with Carol's tits. Wayne was riding in back
4 seat by himself. Wayne said he was in prison nine years in
5 Alabama. I think he said for shooting a colored guy. Wayne
6 was wearing Levis. Tom wore Levis. And light shirt. Tom
7 said he would like to fuck Caro. I was mad but don't remember
8 what was said. I had some beer. Carol don't drink. Then
9 they stopped at that place. While Carol was pissing Tom said
10 something about her twat. I just fucking went crazy. I shot -- "
11 the name "Wayne" appears and crossed out and "Tom" printed
12 above it with the initials "TEC" -- "first. I shot him -- " and
13 some crossed out places and initials "TEC" -- "one time" --
14 "TEC" -- "Wayne had a knife and came -- " At the end of this
15 page it says "I have read each page of this statement consisting
16 of seven pages, each page of which bears my signature, and
17 corrections."

18 This is the same material that appears at the bottom
19 of the first page that I have read.

20 The signature line "Thomas E. Creech" appears,
21 "Page 2 of 7" witnesses "Weslie L. Woodall, William S. Hill."

22 THE COURT: Why don't you start with that sentence again.

23 MR. REMAKLUS: Thank you, Your Honor. I might add, on
24 the top of Page 3 of 7 the printed matter is stricken out, line
25 through it and the initials "TEC".

1 Now, for continuity:

2 "I shot him one time. Wayne had a knife and came
3 at me I hit him with the end of the gun. He fell back and I
4 shot him three times" which has been interlineated with the
5 initials "TEC". "He fell against the door. I got out of the
6 car. Tom was throwing blood all over the place. I stood there
7 for a minute or two. Then I drug them out of the car over to
8 the ditch and covered them with a blanket and sleeping bag.

9 "I took their billfolds and kept them in the car.
10 We drove a little ways and stopped by a cafe and motel and Carol
11 got out and threw up. Carol wanted to call police. We stayed
12 awhile then drove on down the road till the car ran out of gas.
13 I threw the billfolds in the river then we started hitchhiking.

14 "About 20 minutes past and a guy and girl in a blue
15 and white Mazda picked us up and took us to Boise. It was
16 morning time and daylight.

17 "A guy named Jim Marsh picked us up and took us to
18 his house and his wife was pregnant and had a baby the next
19 morning."

20 There's printed material that I have read to you at
21 the bottom of the page with the statement that this same was
22 completed at 4:00 p.m. on the 8th day of November, 1974. It
23 is endorsed on there and in pen "Page 3 of 7" the signature of
24 "Thomas E. Creech" appears on the line saying "Signature of
25 person giving voluntary statement" and the witness,

1 "Weslie L. Woodall, William S. Hill."

2 Now, says "Page 4 of 7" at the top, the printed
3 material has a line through it and the initials "TEC".

4 Number "4. We stayed at Jim's trailer house until
5 last night. We went to the hospital a couple times and visited
6 his wife. I told him what I had done. Jim had a Mercury Comet
7 wagon white with black on the sides red seats. We went target
8 shooting with him. He took his gun I took mine the Hi Standard
9 automatic. Jim bought the boxes of shells in Carol's purse
10 last night before we left. Jim's gun is a .22 revolver. The
11 safety guard on the cylinder was missing that keeps the shells
12 from falling out."

13 Proceeding on Page 5 of 7 with the printed material
14 being marked out and initials "TEC".

15 "We shot all the shells up that was in the gun.

16 "I stole the gun from the guy that is living with
17 Carol's mother in Lewiston. That was on Sunday.

18 "Last night Jim brought Carol and I to the rest
19 area. About 1:00 or 1:30 Steven Paul Rivers gave us a ride to
20 Mountain Home. I went to sleep. We then went to Glenns Ferry
21 where we got arrested."

22 Is that the end of the statement that I'm permitted
23 to read?

24 THE COURT: You can read the printed matter and the
25 signature again.

1 MR. REMAKLUS: Yes, Your Honor. This, again, "I have
2 read each page of this statement consisting of" blank "pages,
3 each page of which bears my signature, and corrections, if any,
4 bear my initials, and I certify that the facts contained herein
5 are true and correct. I further certify that I made no request
6 for the advice or presence of a lawyer before or during any part
7 of this statement, nor at any time before it was finished did I
8 request that this statement be stopped. I also declare that
9 I was not told or prompted what to say in this statement.

10 "This statement was completed at 4:00 p.m. on the
11 8th day of November, 1974" signed "Tom E. Creech" on the line
12 where it says "Signature of person giving voluntary statement."

13 Witness, "Weslie L. Woodall, William S. Hill."

14 There are some additional pages.

15 THE COURT: Mr. Remaklus, you can have this back.

16 MR. REMAKLUS: Thank you, Judge.
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1 DIRECT EXAMINATION (Continued)

2 BY MR. REMAKLUS:

3 Q Mr. Woodall, after taking the statement that has
4 just been read into evidence, what, if anything, did you do?

5 A We turned -- returned Tom Creech to the jail cell
6 in the Mountain Home Police Department shortly thereafter -- well,
7 there was a couple hours, probably, close to it, he was taken
8 into Magistrate Court for -- where a hearing was held. When
9 that hearing was over Officer Maxwell, myself and Investigator
10 A. R. Mason transported Tom Creech and Carol Spaulding back to
11 Valley County and Jim Maxwell, in Jim Maxwell's patrol car,
12 followed by a State vehicle.

13 Q Did you go to -- into Magistrate's Court with the
14 defendant in Mountain Home?

15 A Yes, sir.

16 Q Were you present during that hearing?

17 A Yes, sir.

18 Q During that hearing was the Miranda, constitutional
19 warning again given by the Magistrate?

20 A Yes, it was.

21 Q Were you a witness to that?

22 A Yes, sir.

23 MR. REMAKLUS: Would you mark this State's 59.

24 (State's Exhibit No. 59 marked for identification.)

25 Q BY MR. REMAKLUS: Mr. Woodall, handing you what's

1 been marked for identification as State's Exhibit 59, would you
2 look at it, please.

3 Is that a photocopy of the Miranda Warning given to
4 Mr. Creech in Mountain Home on that day?

5 A. Yes.

6 Q. Were you present when that was read aloud?

7 A. Yes, sir.

8 Q. Is that the defendant's signature at the bottom of
9 the page?

10 A. Yes, it is.

11 Q. So, is that your signature on the -- appearing as
12 a witness there too?

13 A. Yes, sir.

14 Q. And who is the other -- who are the other witnesses
15 -- were you present when they signed it?

16 A. Yes, sir.

17 Q. Who were they?

18 A. C. C. Campbell; which was the Magistrate, and a
19 "Wilson" and I'm sure he's a Mountain Home Police Officer, I
20 believe.

21 Q. Um-hmm. And you signed it also?

22 A. Yes.

23 Q. And do you know this to be a photocopy of that
24 statement?

25 A. Yes.

1 MR. REMAKLUS: I would offer State's 59.

2 (Brief delay.)

3 MR. REMAKLUS: I would withdraw this. Apparently it
4 wasn't offered to Counsel before trial.

5 MR. ROBINSON: We would object, Your Honor, because this
6 is part of the -- these are part of the documents that were
7 never offered to us under the discovery rules and the Court's
8 Order.

9 MR. REMAKLUS: I'm not sure it was covered under --

10 THE COURT: I'm not either. Would you check.

11 MR. REMAKLUS: I would withdraw my offer at this time.
12 This is part of a public record, Your Honor.

13 MR. ROBINSON: I don't consider it that significant so,
14 if offered, I'm not going to interpose any objection at all.

15 THE COURT: I'd have to check the discovery. I'm not
16 real sure that discovery order covered this kind of record.

17 You withdraw your objection?

18 MR. ROBINSON: Yes, I don't feel that it is that
19 significant.

20 THE COURT: All right, 59 will be admitted.

21 (State's Exhibit No. 59 admitted into evidence.)

22 MR. REMAKLUS: May I read the Exhibit, Your Honor?

23 THE COURT: Yes.

24 MR. REMAKLUS: "In the District Court of the Fourth
25 Judicial District of the State of Idaho, in and for the County

1 of Elmore. State of Idaho, plaintiff, versus Thomas Creech,
2 defendant, Case No." blank.

3 "Acknowledgement of Notification. This is to
4 acknowledge that C. C. Campbell, who has identified himself to
5 me as a duly appointed, qualified and acting Magistrate of the
6 District Court in and for Elmore County, Idaho, has advised me
7 of the following facts:

8 "1. That I have an absolute right to remain silent
9 and do not have to make any statement.

10 "2. That in the event I did decide to make a
11 statement, anything I say can and will be used against me in a
12 court of law.

13 "3. That I have an absolute right to have a lawyer
14 advise and represent me at all stages of the proceeding.

15 "4. That I have the right to a lawyer even if I
16 cannot afford one, and if I cannot afford one, I may use the
17 services of the Public Defender at any time and at public
18 expense.

19 "5. That I have the right to have a preliminary
20 examination.

21 "I understand the above and have a full awareness
22 of each of said rights as explained to me by the above-named
23 Magistrate.

24 "Dated this 8th day of November, 1974, at 5:45 p.m."

25 Signature line "Tom E. Creech, defendant."

1 Witnessed "C. C. Campbell" another witness appears
2 to be the name of "Wilson", the third witness was
3 "Weslie Woodall."

4 Q BY MR. REMAKLUS: After the court hearing, what
5 happened after the court hearing -- or did you say that you
6 transported the defendants to Cascade, Idaho?

7 A Yes, sir.

8 Q And how were they transported?

9 A In Deputy Sheriff Maxwell's County patrol car.

10 Q And who rode in that car?

11 A I drove, Carol Spaulding was on the passenger side
12 in the front seat; I think A. R. Mason was in the left-rear,
13 Tom Creech in the center and Deputy Sheriff Maxwell on the
14 right-rear.

15 Q Did you have an opportunity to observe the demeanor
16 and actions of the defendant during the trip from Mountain Home
17 to Cascade?

18 A It was dark, there was some conversation, I couldn't
19 hear what it was, really.

20 Q And then how long did that trip last; do you remember,
21 Mr. Woodall?

22 A About three hours.

23 Q Was anything else transported with the defendants?

24 A All of the items that we had taken charge of at the
25 Elmore County Sheriff's office and Courthouse, the items that

1 had been entered into evidence here.

2 Q And were the items that you have identified, were
3 these transported in the Valley County vehicle driven by you?

4 A Yes, sir.

5 Q Were there other items also transported at that
6 time; clothing of Miss Spaulding and so on?

7 A Yes, there was.

8 MR. REMAKLUS: I'm wondering, Counsel, we have a
9 stipulation as to what these "Q" numbered items were and I'm
10 wondering if we can stipulate, without opening all of these,
11 what they were that were transported?

12 MR. ROBINSON: Could we have a short recess to straighten
13 all that out, Your Honor?

14 THE COURT: All right. Can you do it in ten minutes?

15 MR. ROBINSON: Yes.

16 THE COURT: We'll take a ten-minute recess. If you will
17 remember the admonition, don't discuss the case and keep your
18 minds open.

19 (Recess taken.)

20 THE COURT: Let the record show the jurors are all
21 present.

22 MR. REMAKLUS: Thank you, Your Honor.

23 At this time the State would offer into evidence
24 State's Exhibits 10, 11, 12 and 13.

25 MR. ROBINSON: I've examined these, Your Honor, and I

1 believe if we would have the corresponding "Q" number with each
2 of those, we would have no objection.

3 THE COURT: Ten, 11, 12 and 13 will be admitted.

4 MR. REMAKLUS: The "Q" number of 10 is Q-4, the "Q"
5 number on State's Exhibit 11 is Q-1, the "Q" number on 12 is
6 Q-2, the "Q" number on 13 is Q-3.

7 May the Clerk mark the outside of the envelope with
8 the exhibit number as well as the bottle being marked?

9 THE COURT: Well, if she can mark the bottle without
10 covering up anything.

11 THE CLERK: I'm going to mark the envelope with the
12 exhibit number, Your Honor.

13 THE COURT: Yes.

14 (Whereupon State's Exhibits 10, 11, 12 and 13,
15 previously marked exhibits, admitted into evidence.)

16 MR. REMAKLUS: At this time I would offer State's
17 Exhibit 22 and State's Exhibit 23.

18 MR. ROBINSON: No objection, Your Honor.

19 THE COURT: Twenty-two and 23 will be admitted.

20 MR. ROBINSON: For description purposes, Your Honor,
21 22, also designated K-1.

22 MR. REMAKLUS: Yes, on the FBI report that we're going to
23 introduce in a minute, it would be K-1.

24 (Whereupon State's Exhibits 22 and 23, previously
25 marked exhibits, were admitted into evidence.)

1 MR. REMAKLUS: At this time I would move the admission
2 into evidence of State's Exhibit 24; which is the long maxi
3 coat.

4 MR. ROBINSON: No objection, Your Honor, and I believe
5 that's designated Q-17.

6 MR. REMAKLUS: Q-17, correct.

7 THE COURT: Twenty-four will be admitted.

8 (Whereupon State's Exhibit No. 24, a previously
9 marked exhibit, was admitted into evidence.)

10 MR. REMAKLUS: I'd ask to have State's 25, the black
11 purse, admitted.

12 MR. ROBINSON: No objection, Your Honor.

13 THE COURT: Twenty-five will be admitted.

14 (Whereupon State's Exhibit No. 25, a previously
15 marked exhibit, was admitted into evidence.)

16 MR. REMAKLUS: I'd offer the contents thereof, along with
17 it.

18 MR. ROBINSON: No objection, Your Honor.

19 THE COURT: All right, that will include the contents.

20 MR. REMAKLUS: No "Q" number on the purse.

21 Twenty-five was admitted with the contents?

22 THE COURT: Yes.

23 MR. REMAKLUS: 25-A, two boxes of shells we will offer.

24 MR. ROBINSON: No objection.

25 THE COURT: 25-A will be admitted.

1 (Whereupon State's Exhibit No. 25-A, a previously
2 marked exhibit, was admitted into evidence.)

3 MR. REMAKLUS: Offer State's 26.

4 MR. ROBINSON: No objection.

5 THE COURT: Twenty-six will be admitted.

6 (Whereupon State's Exhibit No. 26, a previously
7 marked exhibit, was admitted into evidence.)

8 MR. REMAKLUS: Probably take me a minute to check my
9 notes, Your Honor.

10 THE COURT: All right.

11 MR. REMAKLUS: I would offer State's Exhibit 41, ten
12 rounds of ammunition.

13 MR. ROBINSON: No objection, Your Honor.

14 THE COURT: Forty-one will be admitted.

15 (Whereupon State's Exhibit No. 41, a previously
16 marked exhibit, admitted into evidence.)

17 MR. REMAKLUS: I'd offer State's 42, 43, 44 and 45.

18 MR. ROBINSON: Those have been previously offered and
19 rejected by the Court.

20 THE COURT: Sustained because that doesn't apply for the --

21 MR. REMAKLUS: That's where we were.

22 We'd offer 46, a shell casing.

23 MR. ROBINSON: The same as Q-5, Your Honor, and I have
24 no objection.

25 THE COURT: Forty-six will be admitted.

1 (Whereupon, State's Exhibit No. 46 was admitted
2 into evidence.)

3 MR. REMAKLUS: Forty-seven has been admitted, it's a
4 bag with the clothing in it and we have -- we'll get to the
5 contents in a moment.

6 MR. ROBINSON: Yes, Your Honor, I understand that
7 corresponds with Q-25 through 29, Q-30 and 31.

8 THE COURT: I think there's been additional "Q" numbers
9 identified with that Exhibit of 32 and 33; at least as I
10 understood.

11 MR. REMAKLUS: I think that's right.

12 THE COURT: I had that 47 for trial as including "Q"
13 numbers 25 through 33 inclusive as a result of later witnesses.

14 I think, originally you were right, Mr. Robinson,
15 it went through 31, but I understand Mr. Woodall to identify
16 two more "Q" numbers out of that bag.

17 MR. ROBINSON: I have no objection to their inclusion,
18 Your Honor.

19 THE COURT: All right, the record may show that 47 is
20 admitted with it including Q-25 through 33 inclusive, then.

21 (Whereupon State's Exhibit No. 47, including Q-25
22 through Q-33 inclusive, admitted into evidence.)

23 MR. REMAKLUS: Forty-seven has been admitted?

24 THE COURT: Yes, but we didn't have all the "Q" numbers
25 identified with it, I think.

1 MR. REMAKLUS: I would now offer Plaintiff's 48, another
2 shell casing.

3 MR. ROBINSON: Same as Q-6, Your Honor. No objection.

4 THE COURT: Forty-eight will be admitted.

5 MR. REMAKLUS: And it is the same as Q-6.

6 (Whereupon State's Exhibit No. 48 was admitted into
7 evidence.)

8 MR. REMAKLUS: My notes show State's Exhibit 49 is a
9 statement, State's Exhibit 50, it's been admitted?

10 THE COURT: I show 50 through 59 admitted and 56 subject
11 to deletions.

12 MR. REMAKLUS: Would you mark State's Exhibit 60, please.

13 (State's Exhibit No. 60 marked for identification.)

14 MR. REMAKLUS: I'd move the introduction of State's
15 Exhibit No. 60.

16 MR. ROBINSON: If it please the Court, I understand this
17 to be a carbon copy of an original Federal Bureau of
18 Investigation report dated December 3, 1974 corresponding with
19 all of the "Q" numbers and the "K" number, and it being offered
20 in evidence. We have no objection.

21 THE COURT: Sixty will be admitted.

22 (State's Exhibit No. 60 admitted into evidence.)

23 MR. REMAKLUS: This should be helpful in identifying
24 all the "Q" numbers.

25 MR. ROBINSON: Your Honor, may I confer with Counsel for

1 just a second, please?

2 THE COURT: Yes.

3 (Brief delay.)

4 THE CLERK: Were 17 and 18 denied, Your Honor?

5 THE COURT: Yes, they were denied temporarily.

6 MR. ROBINSON: Oh, yes, I have those as Defendant's
7 Exhibits.

8 THE COURT: I think they were offered by the defendant,
9 A and B.

10 MR. REMAKLUS: Counsel has offered to stipulate, Your
11 Honor, that all "Q" numbers, Q-1 -- wait a minute.

12 MR. ROBINSON: Q-17 through 49, all of the clothing
13 items, Q-17 through 49 may be considered a part of the State's
14 Exhibit 47.

15 THE COURT: Very well. Forty-seven will be enlarged to
16 include Q-17 through 49 inclusive.

17 MR. ROBINSON: Yes, Your Honor, defense will stipulate.
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1 DIRECT EXAMINATION (Continued)

2 BY MR. REMAKLUS:

3 Q Mr. Woodall, handing you what's the FBI report
4 admitted as Plaintiff's Exhibit 60, would you just quickly
5 check these "Q" numbers, 17 through 49 -- wait a minute, 17
6 through 31, and -- through 33, go down that far and tell me
7 which of the items that were transported from Mountain Home to
8 Cascade on November 8th?

9 A Q-17, coat from Spaulding -- do you want me to
10 identify each one of the articles?

11 Q Now, let me just -- just tell us on Q-17 through --
12 as far as you go, how many of those "Q" numbers represent the
13 items that you brought from Mountain Home to Cascade on
14 November 8th?

15 A Q-17 up through Q-35 would be it.

16 Q Q-35 would be the last one?

17 A Yes.

18 Q And what is that?

19 A That is a shirt.

20 Q Fine.

21 A I think, probably this shirt we took out of the bag.

22 Q Yes, thank you, Mr. Woodall.

23 Mr. Woodall, had you testified just before the
24 recess that about transporting the defendant and Miss Spaulding
25 back to Cascade?

1 A Yes, sir, I did.

2 Q Did you have anything further, any further contact
3 with the defendant or Miss Spaulding since that time until
4 this trial commenced?

5 A I talked to the defendant very briefly in the
6 Ada County Jail on one occasion.

7 Q And do you know when that was?

8 A No, I don't know the date, sir.

9 Q Um-hmm. Who was present?

10 A Deputy Sheriff Maxwell and an Ada County Deputy.
11 There's been some court appearances and hearings that I have
12 attended where the defendant and Carol Spaulding have been
13 present.

14 MR. REMAKLUS: Um-hmm. You may examine, Mr. Robinson.

15

16 CROSS EXAMINATION

17 BY MR. ROBINSON:

18 Q Officer Woodall, let's go directly to this 9:30 hour
19 on the 8th day of November, 1974.

20 You say you arrived at Mountain Home, Idaho
21 approximately that time and met other officers at the El Rancho
22 Cafe; is that correct?

23 A Would have been about 8:30.

24 Q About 8:30?

25 A When we arrived there.

1 Q Arrived there at 8:30 and stayed until 9:30,
2 having breakfast and talking?

3 A We didn't have breakfast. We talked with the
4 deputies and officer there.

5 Q Who was present there at the El Rancho?

6 A Myself, Deputy Sheriff Maxwell, Detective Freeman
7 from Elmore County, Officer Hill from Glenns Ferry, Paul Rivers
8 -- Steven Paul Rivers.

9 Q All right. Did you know all the other persons
10 besides Mr. Rivers were law enforcement officers?

11 A Yes.

12 Q They identified themselves as such --

13 A Yes.

14 Q -- is that correct?

15 All right. What information was then given to you
16 about prior interrogation, or questioning of either
17 Carol Spaulding or Thomas Creech as of that hour, the 8:30 to
18 whatever time it was when you were there at the El Rancho?

19 A I think Officer -- or Detective Freeman was the
20 only one that gave any information; other than the details of
21 the arrest, transporting them back to Mountain Home.
22 Detective Freeman stated that Creech would talk, that he had
23 indications that we did have the right people.

24 Q He had indications that you had the right people?
25 This was a comment made by Officer Freeman?

1 A. Something to that effect.

2 Q. And that Creech would talk?

3 A. Something like that. He stated he had talked to
4 him and he would talk; other than at that time he called him
5 "Turner".

6 Q. At that time he was still calling Tom Creech
7 Tom Turner?

8 A. Yes.

9 Q. All right. And the first person you chose to see
10 was Carol Spaulding?

11 A. Yes. She was at the Courthouse when we went back
12 there.

13 Q. All right. You have to go past the Police Department
14 to go on a block further, block and a half further to the
15 Sheriff's office in Mountain Home; is that correct?

16 A. That's correct.

17 Q. So, actually, it was your choice to talk to
18 Carol Spaulding first; is that correct?

19 A. Not necessarily.

20 Q. Why was she chosen to talk to first?

21 A. We went to the "Ada" County Courthouse to look and --

22 Q. You are referring to the Elmore County Courthouse?

23 A. Elmore County Courthouse, to look at the articles
24 that had been taken from Creech and Spaulding and see if they
25 were to be considered as evidence.

1 Q All right. Before going up to look at those, did
2 you look into Carol Spaulding?

3 A I looked in the door through the jail cell.

4 Q She was in a cell?

5 A Yes.

6 Q Describe her demeanor to the jury.

7 A Had stringy blonde hair, dressed in blue jail
8 coveralls, was nasty talking, loud, angry acting.

9 Q How long at this particular point did you observe
10 her?

11 A Just momentarily.

12 Q All right. Then did you go ahead and proceed up
13 to the Commissioners' Room on the second floor to investigate
14 and check out this property?

15 A Yes.

16 Q And how long did you engage yourself in that
17 activity before you commenced a question and answer period with
18 Carol Spaulding?

19 A Probably a half hour.

20 Q Would you give us the time of your best estimate as
21 to when you commenced the interrogation, or questioning of
22 Carol Spaulding?

23 A More -- somewhere close to 10:00 a.m.

24 Q And again who was present with you during that
25 question period, or session?

1 A. Deputy Sheriff Maxwell, Detective Freeman,
2 Officer Hill, Carol Spaulding, myself. I don't recall anybody
3 else.

4 Q Did a matron bring her up?

5 A. I don't recall any matron being there.

6 Q All right. How long did this session last?

7 A. Probably an hour, close to it.

8 Q All right, let's start from the beginning through
9 an hour session. What can you remember as to Carol's attitude
10 and demeanor at the commencement of this questioning session?
11 Cooperative?

12 A. No, sir.

13 Q Well, what was it?

14 A. Belligerent.

15 Q Expressed in what manner?

16 A. Foul language, derogatory statements about police
17 officers, sullen attitude.

18 Q Was she high?

19 MR. REMAKLUS: I'd object to that as no foundation for a
20 question like that.

21 THE COURT: Overruled.

22 THE WITNESS: I honestly don't know.

23 Q BY MR. ROBINSON: Did she appear to you, on the
24 basis of your experience as a narcotics investigator, to be
25 a person that was then under the influence of drugs?

1 A. At that time that was my opinion but having got to
2 know Carol Spaulding and seen her at different times and later
3 dates, I don't know. At the time I thought she must be high
4 on something to act that way.

5 Q All right. What other physical symptoms were there
6 in relationship to dilation of pupils, bloodshot eyes?

7 A. I didn't notice.

8 Q Speech?

9 A. Her speech was very good when she wanted it to be.

10 Q Walking, movement of arms, in or out of control?

11 A. She was very much in control walking. She said --
12 may I -- she'd set in a chair with her feet up here (indicating)
13 head down here (indicating) eyes down at the floor. We repeatedly
14 asked questions if she understood her Miranda Warnings, if she
15 understood her rights. She would shake her head "Yes, sir" and
16 she would look and refuse to speak. She -- first she would be
17 affirmative then she would refuse to speak at all.

18 At one point I told her "For hell sakes, straighten
19 up and quit acting like a retarded idiot." At that time she
20 sat up straight in the chair and very straight said "I'm not
21 retarded".

22 At that point she talked plain, told different
23 incidents that happened.

24 Q Now, hold just a second if you would, Officer.

25 How far in time were you into this interview session?

1 A Within the first five minutes, ten minutes.
2 Possibly ten minutes.

3 Q So, what you described of her sullen attitude,
4 downcast eyes and such and the belligerency continued for a
5 period of about five minutes before you made these remarks?

6 A Probably close to five minutes.

7 Q Close to ten minutes or would it have been longer
8 than five minutes?

9 A Between five and ten minutes.

10 Q All right. Then, go ahead, Officer Woodall, and
11 describe what happened next in this session.

12 A She told us where she had been, where her mother
13 lived in Lewiston, where she had met Tom. She had run away from
14 home several times; that she had traveled from Lewiston and had
15 gotten a ride from two people in a car. She was showed pictures
16 of the vehicle by Deputy Sheriff Maxwell.

17 Q Of what vehicle?

18 A Of a blue and white '56 Buick.

19 Q That's the same car that's been identified here
20 as the death car; is that correct?

21 A Yes.

22 Q All right. Now, before we skip over it,
23 Officer Woodall, did Carol describe to you where she had met
24 Tom Creech in Fresno, California?

25 A She said at a carnival. They were working at a

1 carnival.

2 Q In California?

3 A Yes.

4 Q She describe the fact to you that she had traveled
5 to and from Kentucky with Tom Creech?

6 A Not that I recall.

7 Q Did she leave you at that point with an impression
8 that she had just met Tom in California and come to Lewiston,
9 Idaho?

10 A No.

11 Q What impression, or what did she say in that regard
12 as to the travels?

13 A A question was asked how long she had been with
14 Tom. She said, as I recall, it was a couple of months.

15 Q All right. She had been traveling with him,
16 all right.

17 Now, would you go ahead and continue to describe
18 further what this interview session was like following what
19 you've already stated?

20 A She kept asking for a cigarette. When she was
21 refused she'd get mad and be sullen, hang her head, refuse to
22 answer. Then she would start talking again.

23 Q During this time did she ever ask for any pot or a
24 "hit"?

25 A No.

1 Q Ever ask for any medical aid or assistance?

2 A No. She was asked several times if she had taken
3 drugs, if she was on drugs.

4 Q And what was her response?

5 A She said "No".

6 Q All right. Now, during this session you had knowledge
7 that Tom would talk to you?

8 A I had an indication that he would.

9 Q All right. What method or mode of police work did
10 you use in breaking down Carol to get a statement from her about
11 Arnold and Bradford?

12 MR. REMAKLUS: I would object to "breaking down", the use
13 of --

14 THE COURT: Yes, the objection is sustained.

15 Q BY MR. ROBINSON: Officer Woodall, would you
16 describe to us what method of questioning that you used prior to
17 Carol coming forth with information about the death of Arnold
18 and Bradford?

19 A I don't know if I understand how to answer that
20 question.

21 There was no certain method or anything used. It
22 was merely a question and answer and --

23 Q And she suddenly, during one of these questions,
24 just blurted out "Tom did it"; is that the way it happened?

25 A She never at any time denied that he did it. She

1 said "Tom killed those guys".

2 Q You mean from the very first moment of the
3 commencement of this interview at 10:00?

4 A Not from the very first moment. The first several
5 minutes was spent making sure that she did understand her rights.
6 Some time was spent at this and finding out if she did -- if she
7 would talk to us, if she did want an attorney; at which time she
8 said that she would talk to us and when told why we wanted to
9 talk to her she said "Tom shot those guys". That was her words.

10 Q Did that occur within the first five or ten
11 minutes of the interview session?

12 A Yes.

13 Q And you spent the rest of the 50 minutes doing what,
14 then?

15 A Just visiting with her, talking to her. I was
16 calling --

17 Q Pardon?

18 A -- I was called in and out of the room on several
19 different times. I wasn't there the entire time.

20 Q Who was there for the entire period of time?

21 A I don't know if any one of the officers was there
22 during the entire period of time. Everybody was getting phone
23 calls and phone was ringing and other people wanting
24 information.

25 Q To your knowledge was Carol Spaulding's version

1 reduced to a handwritten, or a document in writing or typed?

2 A I didn't do it. I think Officer Hill included in
3 his report part of what she said. I don't know for sure.

4 Q Do you recall whether or not during this hour session
5 on the 8th of November, 1974, whether or not the pictures of
6 Arnold and Bradford were exhibited to Carol Spaulding?

7 A There was a Polaroid photo shown to her, yes -- or
8 several Polaroid photos.

9 Q Several Polaroids?

10 A By Officer Maxwell, had some Polaroid pictures he
11 had taken. They were shown to her.

12 Q Hadn't you also taken some film?

13 A Yes, sir.

14 Q Weren't those available?

15 A No, they were not developed yet.

16 Q What was Carol's reaction when she looked upon these
17 photographs of Arnold and Bradford?

18 A She hung her head and covered her eyes. She cried
19 some.

20 Q And she did what?

21 A I don't recall her words right at that time.

22 Q And was this the identical reaction she had to both
23 pictures?

24 A Of both pictures of both bodies or what?

25 Q Yes.

1 A. I think she was shown both at the same time.

2 Q. Did she identify the bodies of the persons in the
3 photographs?

4 A. Not that I recall; other than her statement.

5 THE COURT: We'll take our noon recess at this time.

6 We'll be in recess until 1:30. If you remember the
7 admonition, don't discuss the case and keep your minds open.

8 (Noon recess taken.)

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1 WALLACE, IDAHO, TUESDAY, OCTOBER 14, 1975, 1:30 P.M.

2 (Jurors re-entered the courtroom.)

3
4 THE COURT: Let the record show the jurors are all
5 present.

6 MR. ROBINSON: May I continue, Your Honor?

7 THE COURT: Yes.

8
9 CROSS EXAMINATION (Continued)

10 BY MR. ROBINSON:

11 Q Officer Woodall, in your direct examination I
12 listened carefully to your qualifications and you've served many
13 of the Idaho communities, not only as a police officer but also
14 Chief of Police; is that correct?

15 A Two communities as Chief of Police, one as a
16 City Police Officer.

17 Q All right. And you are presently an Investigation
18 Officer with the State of Idaho, the Attorney General's Office?

19 A No, it has no connection with the Attorney General's
20 Office.

21 Q This is, what, special group, then?

22 A Department of Law Enforcement.

23 Q All right. And this is on a statewide basis?

24 A Yes.

25 Q And in your career as a law enforcement officer, you

1 have questioned and interrogated many, many people; have you not?

2 A. Many, yes, sir.

3 Q. All right. And you had many, many people tell you
4 stories that were not true; have you not?

5 A. I would say yes.

6 Q. And many of those that told you untruths, finally
7 came around and admitted to you some truths involving themselves
8 in the circumstances that you were investigating; is that
9 correct?

10 A. That's correct.

11 Q. All right. Now, specifically with that in mind,
12 describe to me and to this jury what resistance that you
13 encountered questioning and interrogating Carol Spaulding on the
14 8th day of November, 1974 regarding both the route of travel and
15 involvement in the deaths of Arnold and Bradford.

16 A. Resistance met was, if you may, a hot and cold
17 attitude. First she would be real responsive then she would be
18 sullen then she would respond and she would pout.

19 Q. During your encounter with Carol Spaulding did she
20 ever try to advise you that she was traveling a route that
21 brought her from California up through Boise and east rather
22 than from the north, going south through Boise where she was
23 arrested?

24 A. Not that I recall.

25 Q. Were you ever advised, prior to your own

1 interrogation, that she had ever given any other route of travel?

2 A. No.

3 Q. At this meeting you had with the Civil Law
4 Enforcement Officers at the El Rancho Cafe in Mountain Home,
5 had you been informed, "dressed-in", if you will, from their
6 information of the belligerency and the attitude on the part of
7 Carol Spaulding that you would meet when you finally got over
8 there?

9 A. Somebody did state something about her vocabulary,
10 her vulgar attitude.

11 Q. All right. So, when you actually did see
12 Carol Spaulding for the first time before you commenced
13 questioning, you were not surprised at what you saw; is that
14 correct?

15 A. I wouldn't say I was surprised, no.

16 Q. All right. Now, I believe, before our lunch recess
17 you had related that for the first five minutes of this
18 questioning session between 10:00 and 11:00 that
19 Carol Spaulding's attitude was one of belligerency, profanity
20 and using vulgar terms, lower her eyes with her feet up on a
21 chair and being sullen. Is that a correct statement of what
22 you had testified to?

23 A. Yes, that was her general attitude over --
24 intermittently she would respond to questions and either
25 affirmative or negative; whichever. But, she did respond "Yes"

1 or "No".

2 Q What key questions were then asked to Carol to get
3 responses from her that she knew something about the deaths of
4 Arnold and Bradford?

5 A I can't recall the specific questions asked; other
6 than --

7 Q Well, did she start volunteering this information?

8 A There was questions asked that brought this
9 information out, I'm sure; having to do with travel and her
10 location, where she was at.

11 Q If you'd speak up.

12 A Having to do with her traveling with Creech; where
13 she came from, where she lived. Any specific questions that
14 were asked that brought this out, I don't recall.

15 Q Officer Woodall, shortly after this session, within
16 that day or the next two days, did you reduce to an official
17 written report what your involvement in the investigation of
18 this case was and, specifically, the sessions of questioning
19 with Spaulding and Creech?

20 A No.

21 Q Have you, to this time, reduced to writing what
22 you heard and who said what and what you asked on the 8th day
23 of November, 1974?

24 A Not as to who said what and --

25 Q Was this session tape recorded?

1 A. No, it wasn't. I had a tape recorder in the room
2 with intent of using it to record any conversation, but it
3 wouldn't work.

4 Q. But it just wasn't used?

5 A. It wasn't used.

6 Q. All right. Then, after the law enforcement officers
7 you've described were in this Commissioners' Room -- that is
8 where you interrogated --

9 A. Yes.

10 Q. -- Elmore County Courthouse?

11 A. Yes.

12 Q. About five minutes after you started questioning
13 Carol was when she started to quote spill the beans close quote?

14 A. Within that length of time.

15 Q. And when she did start talking about the subject
16 matter of Arnold and Bradford's death, did she commence with
17 the death and just continue right on giving you information as
18 to how it occurred and then what happened?

19 A. No, not exactly.

20 Q. Well, would you tell me exactly how it happened?

21 A. Okay. Like I said, she would be hot and then cold.
22 She would respond and then she would hang her head and then
23 she would respond and then she'd hang her head, pout and act
24 sullen. Then she would answer questions in -- she would relate
25 what happened, where she had been. She was real moody.

1 Q What were the questions? Were they similar to what
2 attorneys ask here in court and then what happened in order to
3 prompt her to further explain?

4 A Yes.

5 Q And these were after pausing in the telling of this
6 story?

7 A Yes.

8 Q All right. Officer Woodall, would you specifically
9 relate to us your entire recollection, as of this time, as to
10 what she said occurred up there at Donnelly when Arnold and
11 Bradford were killed, as you remember it.

12 A In response to where had she been and where had they
13 came from they had been in Lewiston visiting her mother. She
14 was asked where the gun came from, she said from the man that
15 Tom had stole it from; the man that lived with her mother.

16 She stated they had came toward Boise from Lewiston;
17 that at Lewiston they had -- they were hitchhiking, they got a
18 ride with two men in a car. I don't recall if she named them
19 by name or not; that they had stopped and the men were drinking,
20 that they had stopped to get beer and get gas; that they had
21 stopped at one point and the one in the back seat had put his
22 hands on her breasts, I think while Tom went in to get
23 cigarettes. She told Tom about it. They went on down the road,
24 they had stopped at this place and, I don't recall how she
25 identified the place, but the place where the shooting took

1 place. She had got out to go to the bathroom when Tom -- she
2 said then "Tom shot those guys".

3 She said she had run from the car, Tom got out and
4 hollered at her and told her to come back or he would shoot her
5 too. She came back, she said "I didn't want to get in the car,
6 Tom put the bodies in a ditch and covered them up."

7 She said they then got in the car, went on down the
8 road towards Boise. At one point they stopped and they slept
9 awhile -- well, back, her statement was in the car, when they
10 stopped she said that the one in the back seat had a knife and
11 held it at Tom's throat. Then, after they had stopped they had
12 got out and then she said "And Tom shot those guys". That's
13 when she run.

14 She said Tom told her to come back and then they got
15 in the car, they went down the road farther, they slept awhile
16 then they went on down the road until the car run out of gas and
17 they had tried to push the car into the river but they couldn't
18 push it. So, they got out and started hitchhiking about
19 daylight. They were picked up and taken to Boise.

20 Q All right. Now, let's go back to that one point that
21 you also had to go back to. Let's be very specific about your
22 recollection and that's regarding the knife being held to Tom's
23 throat before they stopped, I believe is the way you just
24 testified.

25 Is that the way you remember those circumstances in

1 that sequence?

2 A As I recall, and this was done after some trying to
3 remember this particular incident, but she stated she either
4 called him by name or called him "Wayne" had a knife and held it
5 at Tom's throat.

6 Q And then they stopped?

7 A And then they stopped -- or down the road, then they
8 stopped or something. She referred to "that place" or called
9 it "that place".

10 Q All right. And, Officer Woodall, from that time
11 until this time had you had an opportunity to read that which
12 was recorded by Officer Hill of his recollection of this
13 session with Carol?

14 A The only part of that report I've read is that
15 particular part that you're referring to about the bottom half
16 of that page. I haven't read the report.

17 Q Now, have you read that part -- that was admitted
18 into evidence as Defendant's Exhibit No. H?

19 A I read that part since this trial started. I never
20 saw the report prior to that.

21 MR. ROBINSON: Then, am I correct, my records show that
22 that Defendant's Exhibit No. H had been admitted into evidence?

23 THE COURT: Yes.

24 MR. ROBINSON: May I approach and secure that?

25 Q BY MR. ROBINSON: Officer Woodall, I'm handing you

1 Defendant's Exhibit No. H. Turn over to Page 8 thereof, the
2 bottom of the page and reading from my copy and I want you to
3 check it at the same time, "She stated that Tom had jerked her
4 out of the car after the man in back had, had a knife at
5 Tom's throat for some time."

6 Now, is that the way that reads?

7 A. Yes.

8 MR. REMAKLUS: Object to this, the Exhibit speaks for
9 itself, Your Honor.

10 THE COURT: Objection sustained.

11 MR. ROBINSON: All right.

12 Q BY MR. ROBINSON: Officer Woodall, do you recall,
13 yourself, that this is the manner and the way that Carol put
14 that bit of information on the 8th day of November, 1974?

15 A. I don't recall that exactly stated as this says.

16 Q Your testimony was that it was very similar; that
17 the knife was at Tom's throat before they stopped?

18 A. She stated that, yes.

19 Q All right. Thank you very much.

20 Now, Officer Woodall, based upon that experience
21 that we were talking about that you've had as a law enforcement
22 officer, do you feel that you were getting a rehearsed statement
23 of an occurrence?

24 MR. REMAKLUS: I would object, no proper foundation has
25 been laid.

1 THE COURT: Overruled.

2 THE WITNESS: I don't recall what my feelings were,
3 whether it was --

4 Q BY MR. ROBINSON: Did it appear to you and sound to
5 you as a concocted story?

6 A I recall relating later to somebody that I felt that
7 this was something made up, yes.

8 Q Do you recall who it was that you related that to
9 and when?

10 A It would have been with Officer Maxwell in going
11 back over the statements and the evidence.

12 Q How long after November the 8th, 1974?

13 A I don't recall a particular time or when exactly it
14 would have been.

15 Q All right. Now, let's go after lunch.

16 When you and Officer Maxwell got together with
17 Tom Creech, between 1:30 p.m. and 2:00 p.m., did you relate to
18 Tom Creech what Carol Spaulding had stated?

19 A No.

20 Q Did anyone relate to Tom Creech what Carol had said
21 regarding Arnold and Bradford's death?

22 A Not that I recall.

23 Q Now, the voluntary statement that you took states
24 that it commenced at 2:00 p.m. on that day. How long was spent
25 in questioning session, or interrogation with Tom Creech before

1 the voluntary statement itself was commenced?

2 A. There was no interrogation before the -- before the
3 voluntary statement was taken.

4 Q Then you commented right away with State's Exhibit
5 No. 5, the giving of the rights and having Tom sign and
6 acknowledged each of those questions?

7 A. That's the first thing we done when we went into
8 the Commissioners' office.

9 Q All right. How long did that take?

10 A. A few minutes.

11 Q As much as ten minutes?

12 A. Very doubtful.

13 Q All right. And then the additional material and
14 rights that appear at the top of the first page, again advising
15 Tom Creech of his rights, those were read over again?

16 A. Yes.

17 Q And you had filled in the blanks, giving the date,
18 the place, the time that it related to Thomas Eugene Creech of
19 Dayton, Ohio who was born September 9, 1950. All of that was
20 taken care of before Tom commenced giving information?

21 A. Yes.

22 Q And up until this time he had said nothing about the
23 circumstances himself?

24 A. Not that I recall.

25 Q And up until this time had you and Officer Maxwell

1 been in any previous session with Tom Creech --

2 A. No.

3 Q. -- that morning?

4 A. No.

5 Q. The only information you had was from the other
6 officers about their questions to him between 5:00 in the
7 morning and 8:00 in the morning?

8 A. That's correct.

9 Q. And during that period of time did you have any
10 information from any of those officers that Tom Creech had
11 told them anything about where he had been; other than he came
12 from Lewiston area down through Oregon?

13 A. We talked to him at breakfast about this and just
14 exactly what was stated, I don't recall; other than everything
15 stated gave us reasons to believe that this was the right man.

16 Q. All right.

17 A. And that Detective Freeman indicated that he thought
18 that Tom would talk to us.

19 Q. Did he give any basis of that?

20 A. I don't recall any specific thing.

21 Q. Well, at 8:30 to about 9:30 you still were under
22 the impression that the person in custody was Tom Turner; isn't
23 that correct?

24 A. Yes.

25 Q. When did you learn that Tom Turner was not Tom Turner

1 but he was actually Thomas Eugene Creech?

2 A. When I asked him his name to start filling out that
3 statement at 2:00 in the afternoon.

4 Q At 2:00 in the afternoon?

5 A Yes.

6 Q Had there been any FBI check that turned up the name
7 of Thomas Eugene Creech?

8 A No.

9 Q So at 2:00 you had a different name --

10 A Yes.

11 Q -- of the person you were interrogating?

12 A Yes.

13 Q Was this a surprise to you and the other officers?

14 A Not really. He had changed his name once prior to
15 that, I had -- I didn't know who he was yet.

16 Q But, on the voluntary statement you took his new
17 name Thomas Eugene Creech rather than Tom Turner or Adams?

18 A Right.

19 Q Now, according to this statement, the first question
20 asked of Tom, or statement made to him, was that "Tom, we're
21 investigating a double murder that took place about five days
22 ago in Valley County in Idaho."

23 That is what you recall having actually been stated
24 to Tom Creech at that time?

25 A Yes.

1 Q To which he immediately responded by saying "I did
2 it, I did it, I did it."

3 A That's correct.

4 Q And he was crying?

5 A Yes -- not crying.

6 Q Pardon?

7 A In a crying tone of voice.

8 Q All right. Officer Woodall, would you describe
9 totally, then, Tom's demeanor, appearance, the physical aspects
10 of his person right at that time?

11 A His hair was quite messed up, sticking out quite a
12 bit. His eyes were slightly bloodshot, his hands were trembling,
13 he was shaken a little bit, he looked unkempt.

14 Q Did you apprise yourself of the amount of sleep
15 that he had had in the past 24 hours before commencing that
16 statement?

17 A I don't know what he had been doing that day.

18 Q Did you ask him any questions about the intake of
19 any medication, either by prescription or controlled substances?

20 A Not that I recall.

21 Q When he was crying, were there tears in his eyes?

22 A Tears came to his eyes, yes.

23 Q Right at this point in the statement?

24 A Yes.

25 Q And then I believe that you described, the

1 information came pouring forth from Tom Creech to the extent
2 that you would have to stop him so that you could catch up in
3 writing; is that correct?

4 A. Yes.

5 Q. And he wanted to tell you everything?

6 A. Kept talking and I would have to stop him so I could
7 write and catch up, or tried to catch up with what he was
8 saying.

9 Q. All right. Now, is that the circumstances you just
10 described what resulted in your leaving blank spaces to go back
11 and try to fill in and then, if there was no information you
12 would draw a diagonal line through and have Tom initial the
13 blank space?

14 A. That was my intent when the statement started, was
15 to try to fill in the blank spaces, but decided against it.

16 Q. Who decided against it?

17 A. I did against filling them in.

18 Q. But all the information contained in your printing
19 there was your attempt to reflect, as near as possible, what
20 Tom Creech told you during that two hours, 2:00 p.m. until
21 4:00 p.m. on the 8th day of November, 1974?

22 A. Yes.

23 Q. And you completed seven pages?

24 A. Yes.

25 Q. Is that correct?

1 A Yes.

2 Q Or I should say seven and a quarter pages?

3 A Started on the seventh page.

4 Q Pardon?

5 A Started on the seventh page.

6 Q Okay. Was it necessary for you to prompt
7 Tom Creech further after he made his sudden outburst of
8 "I did it, I did it, I did it"?

9 A To prompt him? No. I would tell him to back up and
10 start over, or start where I couldn't keep up or where I
11 couldn't write that fast or I did ask him questions and part of
12 his statement is in response to those questions.

13 Q And is it your testimony that this voluntary statement
14 was completed approximately at 4:00 p.m. as is designated on the
15 voluntary statement itself?

16 A Yes.

17 Q All right. At that particular time on that date
18 had any of the seven pages received any writing at the bottom,
19 of signatures or the time inserted; or was all of that done at
20 once, at one time?

21 A That was all done after the statement was completed
22 and back to Page 1, completed the bottom, signed each page
23 individually and initialed each change, or line on each page as
24 we went through it.

25 At that time I told Tom "to read this and make sure

1 this is what you told me. If it isn't, change it."

2 Q Now, say that once more, please.

3 A I told Tom "to go back and read this entire thing,
4 to make sure that this is what you did tell me and what you
5 want your statement to be; and that if this is not what you told
6 me, change it." Or told him we would change it.

7 MR. ROBINSON: All right. Your Honor, may I deliver to
8 the witness State's Exhibit 56?

9 THE COURT: Yes.

10 MR. ROBINSON: It starts on the second page,
11 Officer Woodall.

12 THE COURT: That's 56, you are saying?

13 MR. ROBINSON: Fifty-six is what I thought I stated,
14 Your Honor.

15 THE COURT: I just wanted to make sure.

16 Q BY MR. ROBINSON: All right, sir, you are on the
17 second page of the entire document with the first page being
18 marked State's Exhibit 55; is that correct?

19 A I am now.

20 Q Pardon?

21 A I'm on the first page of State's Exhibit 56.

22 Q All right. And that is the first page of your
23 voluntary statement; is it not?

24 A Yes, sir.

25 Q Coming down about a third of the page, there is a

1 diagonal line with the initials "TEC" appearing on that line and
2 that immediately follows this outburst and the statement of
3 "I did it, I did it, I did it." In quotes crying close quotes.

4 Then, the question "When". That is where this line
5 commences that is initialed; is that correct?

6 A. Yes.

7 Q. All right. Now, when you went back with Tom did you
8 specifically ask Tom to give you again the information of when?

9 A. This was a question by Jim Maxwell and I don't
10 recall what -- the "When" entailed. I don't recall if he
11 finished that question or he started to say something, Tom said
12 something else before he finished.

13 Q. All right. But, hadn't the question been stated,
14 or statement made to Tom at that time, "This is your statement,
15 you want to add or change anything before you sign it."

16 Isn't that correct, when you went back to draw these
17 lines?

18 A. Yes.

19 Q. And it's your testimony at that point Tom didn't
20 want to change that or add anything to it so a line was just
21 drawn and his initials taken?

22 A. This was a question that Jim Maxwell had asked at
23 the time we went back and Tom initialed these blank spaces. Jim
24 was not there, so this -- the first blank indicates the
25 question --

1 Q Yes.

2 A -- Maxwell asked.

3 Q Yes.

4 A So, it couldn't be filled in because he wasn't there
5 to say what was in it.

6 Q Well, this was not Maxwell's statement, this is to
7 be Tom Creech's statement; isn't that correct?

8 A Yes.

9 Q At any rate, nothing was put in that space as to
10 "When"; is that correct?

11 A That's right.

12 Q All right. And just two lines under that is
13 another diagonal slash with the initials "TEC" filling in
14 another blank after the phrase, "I killed those two guys. I need
15 help." Then this blank space.

16 Do you remember, yourself, what was stated after
17 that comment by Tom?

18 A Yes.

19 Q What do you remember was stated by "I need help"?

20 A I said something to the effect that "Why do you need
21 help, Tom"? Or "What makes you think you need help? Are you
22 crazy?"

23 He said "I must be."

24 I said "Why"?

25 He said, "Well, you don't go around killing people,

1 do you?"

2 I said "No."

3 Q Anything else?

4 A That's all I recall.

5 Q Was there any desire on your part as an
6 investigating officer or Tom's part to complete this voluntary
7 statement by inserting the actual comments that was made?

8 A I don't know what you mean when --

9 Q All right. Now, generally for each of the
10 additional slash marks and initialed areas this occurred under
11 the same circumstances; meaning that Tom was talking faster than
12 you can write, you left space and when it was gone back over there
13 was no desire to add to that information, or fill in the blanks;
14 is that correct?

15 A That's correct.

16 Q Did this story as told to you on that date and that
17 time by Tom Creech, coincide almost exactly with the story you
18 had heard two or three hours before that from Carol Spaulding?

19 A Except for details and the basics were the same.

20 Q Basics were the same? Now, again, Officer Woodall,
21 based upon your entire experience, did it appear and did you
22 feel that you were getting a concocted story?

23 A No, sir.

24 Q You felt that you were getting a spontaneous
25 statement of substance and fact?

1 A. Yes.

2 Q. Did Tom Creech ever at that time explain to you why
3 he was giving you a detailed voluntary statement?

4 A. No.

5 Q. Did you inquire?

6 A. I had no reason to ask him why.

7 Q. All right. You had been in the investigation of
8 this case from the 5th of November, participating in the
9 accumulation of evidence in Donnelly, to the 8th of November;
10 is that correct?

11 A. That's correct.

12 Q. And upon the apprehension of Thomas Eugene Creech
13 and Carol Spaulding and being given a written voluntary
14 statement of admission, did this solve the case as far as you
15 were concerned?

16 A. No.

17 Q. Beg your pardon?

18 A. The case was not finished by far.

19 Q. Well, you had to corroborate, send in the articles
20 for laboratory investigation analysis in order to put all of
21 the parties together at the scene where the deaths occurred and
22 you -- that's part of the investigation.

23 A. Yes. There's a good deal, many more people
24 interviewed and statements taken from a lot of other people too,
25 afterwards.

1 Q A lot of which people?

2 A Other people who had some knowledge, or came forth
3 with what they thought was knowledge or information about this.

4 Q All right.

5 A It was either --

6 Q Who were they specifically, if you recall?

7 A Kenny Records in Nampa.

8 Q Out of Nampa?

9 A Yes.

10 Q And who is he?

11 A A truck driver, trucker.

12 Q And did he volunteer some information about seeing
13 hitchhikers on the road?

14 A Yes.

15 Q All right. Who else?

16 A The names I can't recall.

17 Q All right. How about the service station operator
18 at New Meadows that saw five people in this Buick?

19 MR. REMAKLUS: Object, assuming facts not in evidence,
20 Your Honor.

21 THE COURT: Sustained.

22 Q BY MR. ROBINSON: Officer Woodall, did your
23 investigation continue to attempt to make sure you had the
24 right parties involved in this double death?

25 A Yes, sir.

1 Q Would you describe to us, then, what further
2 investigation you went through to make sure that all facets of
3 the investigation had been covered?

4 A Just a continuing process of processing evidence,
5 interviewing people; verifying that the evidence we did have was,
6 in fact, what it appeared to be. Just a continuing investigation.

7 Q In the investigation of the trunk of the 1956 Buick
8 vehicle, was there a laboratory check made to determine whether
9 or not heroine had been spilled in that trunk compartment?

10 A Not to my knowledge.

11 Q Do you remember personally talking with a young man
12 that testified here last week, a service station attendant in
13 Grangeville, on his identification of the men -- John Stewart,
14 of the men in the vehicle when it pulled into the Texaco
15 service station twice?

16 A No, sir.

17 Q Do you know who conducted the investigation and
18 talked with John Stewart regarding that set of circumstances?

19 A I would only be assuming, I didn't talk to him.

20 Q What is your best knowledge in that regard,
21 Officer Woodall?

22 A I would assume that Officer Maxwell talked to him.
23 He went back that way and on to Lewiston.

24 Q During the entire time you were on the investigation
25 of this case, Officer Woodall, did you ever encounter

1 information that there were more than four parties in the 1956
2 Buick at any one time?

3 MR. REMAKLUS: I'm going to object to that on the same
4 ground, Your Honor, this is suggestive. It's another way to do
5 the same thing, Your Honor.

6 THE COURT: Well, leading questions are permitted on
7 cross-examination. This doesn't assume any facts. It just
8 asks if it's true or not. Overruled.

9 THE WITNESS: Not in the 1956 Buick in question. We
10 talked to people in New Meadows, Idaho that had gave
11 information about people in another type of vehicle, three men
12 and a woman, or four men and a woman; which later proved to be
13 a different type of vehicle. Physical descriptions were
14 different and, which later we had reason to believe were
15 hunters, deer hunters, and they had returned to Boise. That's
16 the only indication of more people at any one time. The only
17 information we had about anybody else.

18 Q BY MR. ROBINSON: All right. And that's -- that
19 information supposedly occurred on the same day that the '56
20 Buick would have been coming through New Meadows at
21 approximately the same time?

22 A As near as I can recall after the information given
23 to us when we went and talked to these people.

24 Q That's the people at New Meadows?

25 A Yes.

1 Q Did you or any other investigation officer ever
2 talk to the people that were actually occupying some other
3 vehicle?

4 A No, not that I know of. I didn't.

5 Q You still have State's Exhibit No. 56 in your
6 possession, do you, Officer Woodall?

7 A Yes.

8 Q On the bottom of Page 2, the next to the last line
9 where it commences "First I shot him" a changeover to show it
10 was changed from three to one time, "Wayne had a knife and came
11 at me."

12 Is that the way you had it recorded in the
13 voluntary statement?

14 A You mean was the change made?

15 Q No. First of all, is that the way you have it
16 recorded in this voluntary statement? The way I just read it?

17 A I misunderstood. Would you read it again the way
18 you have it?

19 Q "First. I shot him one time Wayne had a knife and
20 came at me I hit him with the end of the gun he fell back and
21 I shot him three times."

22 Now, is that the way you have it recorded in the
23 statement?

24 A No.

25 Q Would you tell me what's different?

1 A. You said "I shot him". I have "I shot Tom" and
2 Wayne is crossed out.

3 Q. Well, that cross-out is in a sentence just before
4 I started. I started with the "First" after that cross-out.
5 In other words, you have a sentence there before.

6 A. Okay.

7 Q. Would you start and read yourself commencing with
8 "I shot Tom".

9 A. "I shot Tom first. I shot him -- " three crossed
10 out, initialed "TEC", "one time" the "S" on "time" is crossed out,
11 initialed "TEC". "Wayne had a knife and came at me I hit him with
12 the end of the gun he fell back and I shot him three times."

13 Q. Now, that's the way it's recorded in the voluntary
14 statement?

15 A. Yes.

16 Q. And your testimony is that both Tom and Carol had
17 stated that the knife was held to Tom's throat prior to the
18 occurrence of stopping the vehicle, or that the knife was at
19 Tom's throat before Carol got out?

20 A. No, Carol stated that. All Tom stated to me was
21 "Wayne had a knife and came at me." I don't recall Tom ever
22 saying the knife ever being at his throat. Carol did say that.

23 Q. All right. Officer Woodall, have you been around
24 Thomas Eugene Creech after the commencement of his incarceration,
25 his being locked in jail on many occasions?

1 A. I would say a few occasions rather than many.

2 Q All right. A few meaning what in number and what
3 in duration?

4 A. Probably three or four times in addition to that
5 time at Cascade when we spent three days there.

6 Q That was the commencement of the first trial in
7 this matter?

8 A. Yes.

9 Q All right.

10 A. At that time I was around Tom back and forth from
11 his cell a few times. I conversed with him briefly.

12 Q And the other three occasions were what length of
13 time?

14 A. An arraignment in court, I think I was there. I
15 saw him one time in the Ada County Jail and just spoke to him.
16 I didn't talk to him about this case, court appearances.

17 Q All right. Have you, at any of these encounters
18 with Tom, seen him spaced out?

19 A. No.

20 Q Have you ever seen him in a freaked out condition?

21 A. No.

22 MR. ROBINSON: I have no further questions.

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mr. Woodall, when referring to the voluntary
4 statement on Page 1 near the top of the page where it says,
5 "Tom: I did it, I did it, I did it." You have the word
6 "crying" then you have question "JM: When".

7 Now, if I understand correctly in response to
8 Mr. Robinson's questions you said then after the statement was
9 completed you went back and drew the hash marks down through
10 there and Mr. Creech initial it, is that right?

11 A. That's correct.

12 Q Now, had the time of the shootings been established
13 prior to the time you went back and made these corrections and
14 initialed?

15 A. Yes.

16 Q So that was already in the statement; wasn't it?

17 A. Yes, it was.

18 Q At the present time, during your investigation of
19 this incident, did you ever have reason to believe that it was
20 committed by anyone else?

21 A. No, sir.

22 Q Directing your attention to the -- that portion of
23 this statement on Page 2 where the defendant told you that he
24 shot Tom first, did the defendant ever tell you which one of the
25 two decedents was driving the car?

1 A Yes.

2 Q And which one was that?

3 A Tom.

4 Q Did the defendant, during this time, ever tell you
5 where he was riding or Carol was riding in this '56 Buick?

6 A Yes.

7 Q Where were they riding?

8 A He stated that Tom was on the passenger side by the
9 door, Carol was in the middle in front, Tom was driving, Wayne
10 was in the back seat.

11 Q Now "Tom was driving", who do you mean?

12 A Tom Arnold.

13 Q Now, during the course of taking this statement,
14 did the defendant ever tell you where he was at the time he shot
15 Tom Arnold?

16 A On the passenger side of the vehicle.

17 Q At the moment of the shooting?

18 A Yes, in the front seat.

19 Q Now, where was Miss Spaulding?

20 A Outside of the vehicle --

21 MR. ROBINSON: Objection --

22 MR. REMAKLUS: Excuse me, did --

23 MR. ROBINSON: I was going to state repetitious,

24 Your Honor, but apparently they have a mental wave going here

25 of a different time. I withdraw any objection and see where it

1 goes.

2 Q BY MR. REMAKLUS: What did you say, Mr. Woodall?

3 A She was outside of the vehicle.

4 MR. REMAKLUS: Thank you. I have no further questions.

5 MR. ROBINSON: I have no further question of this
6 witness at this time, Your Honor. However, I do desire him held
7 to the subpoena and to appear in the defense's case.

8 THE COURT: All right. You'll have to be available for
9 further testimony if you are wanted, Mr. Woodall.

10 MR. REMAKLUS: Like to call Mr. Schreiber, please.

11
12 WILLIAM SCHREIBER,
13 a witness produced on behalf of the State, having been first
14 duly sworn, took the stand and testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. REMAKLUS:

18 Q State your name, please.

19 A William Schreiber, S-c-h-r-e-i-b-e-r.

20 Q And what is your age, Mr. Schreiber?

21 A Sixty-eight.

22 Q Where do you live, sir?

23 A Lewiston, Idaho.

24 Q And what is your address in Lewiston?

25 A 2404, Eighth Avenue.

1 Q How long have you lived in Lewiston, Mr. Schreiber?
2 A Fifty-seven years.
3 Q How long have you lived at this particular address?
4 A Fifteen years.
5 Q Pardon?
6 A Fifteen years.
7 Q Fifteen?
8 A Yes.
9 Q Thank you. And anyone else reside at that address?
10 A Yes.
11 Q Who is that?
12 A Mrs. Spaulding, I rent the house to Mrs. Spaulding,
13 two of her children.
14 Q And do you retain space in it for yourself?
15 A Oh, yes.
16 Q Directing your attention to the third day of
17 November, 1974, were you living in that house?
18 A Yes.
19 Q And can you tell me who was there at the house and,
20 say, the day before -- who had been present at there at that
21 house on the day before November 3rd, 1974?
22 A You mean everybody that had been there, you mean?
23 Q Yes.
24 A Well, I don't know for sure. Now, Tom and Carol
25 came up to visit every day.

1 Q Now, who do you mean when you say "Tom and Carol"?

2 A Tom Creech there (indicating) and Carol Spaulding.

3 MR. REMAKLUS: May the record show he pointed to the
4 defendant, Your Honor?

5 THE COURT: Well, just to make it clear, would you
6 describe what clothes the person he pointed to is wearing?

7 THE WITNESS: Checked pants and brown shirt.

8 THE COURT: Yes, the record may show he pointed to the
9 defendant.

10 Q BY MR. REMAKLUS: You say that Tom Creech and
11 Carol Spaulding had been coming to your home there each day?

12 A Um-hmm.

13 Q And how many -- do you have any idea how many days
14 they had been doing that?

15 A Well, I'd say about four or five days. I'm not
16 positive. The first two days they were in town they stayed up
17 there and, then, they went down and got a room in the Fry Hotel.

18 Q And that's when they would call at your home; is
19 that correct?

20 A Yes, that's when they would come up.

21 Q Was Mrs. Spaulding there?

22 A Yes.

23 Q Who else, Mr. Schreiber?

24 A There was Kathy, her daughter and Glen, the little
25 boy -- wait a minute, Glen wasn't there. Glen come there -- there

1 was just Kathy was there.

2 Q And what's Kathy's last name?

3 A Spaulding.

4 Q All right. Is that a sister to Carol?

5 A Yes.

6 Q Directing your attention to the third day of
7 November, did you see the defendant on that day?

8 A They were up at the house, yeah.

9 Q And you say "they". Who do you mean?

10 A Carol and Tom.

11 Q Were you there at the house all the time that they
12 were there?

13 A No, I wasn't. I went downtown, I don't remember
14 whether I went to the grocery store or where, but I was gone for
15 awhile.

16 Q And when you got back to the house was Miss Spaulding
17 and Mr. Creech, were they there?

18 A No, no, they had left.

19 Q I'm handing you what's been admitted into evidence
20 as State's Exhibit 22. Would you inspect that and tell us what
21 that is?

22 A Yeah, yeah, that's a High Standard.

23 Q Do you know who it belongs to?

24 A Oh, yes, that was my gun. I had that gun for 30
25 years.

1 Q Where did you get it?

2 A I traded it -- a 30/30 rifle for it 30 years ago
3 and the man gave me \$50 to boot for that 30/30 and gave me this
4 little Sport King because I didn't have no use for the 30/30.

5 Q And here is State's Exhibit 23. Would you tell us
6 what that is, if you know?

7 A That's the holster for the gun, yeah.

8 Q Did you get the gun and holster at the same time?

9 A Yes, I got the gun and holster at the same time.

10 Q And did you keep it there at this address in
11 Lewiston with you?

12 A Yes, um-hmm.

13 Q Where did you customarily keep that pistol and
14 holster, Mr. Schreiber?

15 A I put it -- I had it between the mattress and the
16 springs on my bed in my room. I figured it was perfectly safe
17 there because nobody was supposed to be in there.

18 Q And that was where you customarily kept it, is that
19 right?

20 A Yes, um-hmm.

21 Q Did you have occasion to look for that pistol in
22 your room on the third day of November, 1974?

23 A Well, I didn't have -- I wouldn't have missed it for
24 a week but I had another pistol under there too, not another
25 pistol, but a pellet gun, under, you know, between the springs

1 and mattress. In my bed, I went to turn my bed light on and
2 here the barrel of that hit me in the knee when I leaned over
3 to turn on the bed lamp.

4 Q The barrel of what?

5 A On the pellet gun.

6 Q That's not this gun (indicating)?

7 A No, I looked for this gun immediately and when that
8 happened I knew somebody had stolen it because it was gone. It
9 wasn't there and, in fact, I was kind of relieved in one way
10 because I had \$640 in an envelope laying under there that far
11 (indicating) from the gun. If they would have found that, they
12 wouldn't have needed the gun.

13 MR. ROBINSON: Pardon me. About how far did you say that
14 was, the \$640?

15 THE WITNESS: Just about that far (indicating).

16 MR. ROBINSON: May the record show that he's making --

17 THE WITNESS: It was under the sheet. Was under a sheet,
18 see, the gun was on top of the sheet, the money was under the
19 sheet.

20 MR. ROBINSON: May the record show that he was measuring
21 with his hands a measurement of about 12 to 14 inches?

22 THE COURT: I'll let him give the estimate.

23 THE WITNESS: Sixteen inches, about 16 inches.

24 MR. ROBINSON: Thank you, Your Honor.

25 THE WITNESS: I was very relieved to find that wasn't

1 gone.

2 Q BY MR. REMAKLUS: Then, so the pistol and holster
3 were missing, you said?

4 A Yes.

5 Q And then, as a result of your discovery of that,
6 what, if anything, did you do?

7 A Well, I waited until the next morning and I went
8 down and reported to the insurance company and went down to the
9 Police Station and reported it to the Police Station.

10 Q And when was the next time you saw the pistol,
11 Mr. Schreiber?

12 A Well, just now -- well, since, you know, since I've
13 been here in the courtroom I've seen it from a distance. I knew
14 it was my gun. I can tell it as far as I can see it.

15 Q Did you give permission to anyone to take the gun
16 away from your home on November 3rd, 1974, or at any time before
17 that?

18 A Give anybody information?

19 Q Permission to --

20 A Permission -- no, no, I wouldn't give nobody
21 permission to take that gun.

22 Q And at the time that you discovered it was missing,
23 was the defendant, Tom Creech, and Miss Spaulding still at your
24 home?

25 A No, no, they were gone.

1 Q To your knowledge have they ever been back there
2 since that day?

3 A No, never been back.

4 MR. REMAKLUS: You may examine, Mr. Robinson.
5

6 CROSS EXAMINATION

7 BY MR. ROBINSON:

8 Q Mr. Schreiber, you identified the people, or persons
9 who were visiting in this four or five days prior to the third
10 day of November, 1974 in your direct examination; is that
11 correct? You identified the persons that were visiting there?

12 A Oh, yes, um-hmm.

13 Q And Mrs. Spaulding lived there?

14 A Yes.

15 Q Did Kathy live there?

16 A Yes.

17 Q Did Glen live there?

18 A No.

19 Q Who's Glen?

20 A That's her son.

21 Q Glen Spaulding?

22 A Yes.

23 Q What's his age?

24 A He's 11 now.

25 Q Okay. And do you know where he's living?

1 A. He's living there at home now.
2 Q. He wasn't living there at that time?
3 A. No, he wasn't living there at that time.
4 Q. Where was he living?
5 A. In a foster home.
6 Q. Oh, all right. And who else besides Carol Spaulding
7 and Tom Creech visited there in the Spaulding home in that four
8 or five days prior to November 3rd?
9 A. Oh, boy, let's see. I'll tell you, I don't know
10 actually.
11 Q. Dan?
12 A. Dan -- yeah, there was a Dan there.
13 Q. Dan what?
14 A. I don't know these people that these girls bring in,
15 you know, that boyfriends bring in, you know, at 68 years, I
16 haven't much interest in these kids, younger kids that they
17 bring in.
18 Q. All right.
19 A. But, there was a fellow named Dan there and he's
20 with the Mormon Church now as a missionary or something.
21 Q. That's what you've been told?
22 A. Yes, his mother.
23 Q. Would you describe Dan? How tall is he?
24 A. Oh, I'd say about five-nine, ten; something like that.
25 Q. And how tall are you?

1 A. I'm six foot.
2 Q All right. And Dan have a facial complexion problem?
3 A. Yes.
4 Q Acne condition?
5 A. Yes, very strong.
6 Q About how much does Dan weigh?
7 A. One hundred -- between 155 and 165; somewhere right
8 in there. I don't know for sure.
9 Q How old is he?
10 A. Well, let's see. He's going right on 21 now, I
11 think.
12 Q Dan ever threaten you?
13 A. No.
14 Q Never has threatened you?
15 A. Threatened me? No.
16 Q Who else besides -- do you know where Dan lives?
17 A. Well, he lives in Clarkston, I think, but I don't
18 know. I understood he was in Salt Lake City -- or somewhere with
19 this missionary deal. I don't know. I don't know anything about
20 that.
21 Q All right. That's --
22 A. Just what I've heard other kids talk and I never
23 asked. Nobody told me that, I just kind of overheard it.
24 Q Oh, all right.
25 A. I've heard them say that, that's all I know about it.

1 I have no idea.

2 Q Now, in addition to that, in addition to Dan, what
3 other names do you remember?

4 A Boy, I don't remember any other names. I don't
5 know them, that's truthful. I do not know, these girls come in
6 with a boy and set around there a few minutes and take off and
7 I just don't know who they are. I have no idea. I'm not
8 interested enough to -- not ask, you know, it's none of my
9 business.

10 Q All right. Mr. Schreiber, if you would, tax your
11 memory, not necessarily as to name, but number of other people
12 during the four or five days while Carol Spaulding and
13 Tom Creech were there, that came to visit.

14 A Girls and boys, both?

15 Q Yes.

16 A Oh, gosh, 12 probably.

17 Q All right.

18 A I'm not sure, some of them might have been the same
19 ones again. Some there every day because they came to see
20 Carol, you know, they have known Carol and went to school with
21 Carol and some of them come over to see Carol and so forth. It
22 might have been the same ones, but there was somebody there.

23 Q And that's the first visit Carol had been there on
24 since early in August; is that correct?

25 A Yeah, just about in August, yeah, um-hmm.

1 Q All right. At that time she came visiting with
2 Jeannie?

3 A Yeah.

4 Q All right. Was this four or five days just prior to
5 the 3rd of November, 1974, the first time that you had ever met
6 Thomas Eugene Creech?

7 A Yes, um-hmm.

8 Q And the only time that you had ever met him?

9 A That's the only time. I didn't even know his name.

10 Q And what was his demeanor during this four or five
11 days; likeable person, dislikeable or what?

12 A Well, no, he was very quiet around there. I never --
13 in fact, he acted better than any one of the bunch. I never
14 dreamed that he'd steal my gun.

15 Q Do you know that he did?

16 A Yes.

17 Q You know that it was he that stole your gun?

18 A I know it to this far because he was the only -- him
19 and Carol was the only ones there and when it disappeared they
20 left and my gun left. So, I know that I didn't take it and it
21 couldn't go out by itself and it had to go out with them.

22 Q It had to go out with either he or Carol?

23 A Right. It had to go out with either one or the
24 other.

25 Q Then you don't know that Thomas Eugene Creech stole

1 your gun?

2 A. No.

3 Q. Is that correct?

4 A. No, I wasn't there. I wasn't there, I could not
5 say who took it, but I mean, by deduction, the only people in the
6 house, why it would have to be somebody and that's the only way
7 that --

8 Q. All right. Now, Mr. Schreiber, when you discovered
9 the gun was gone, you reported it to the police; is that your
10 testimony?

11 A. And my insurance company.

12 Q. Your insurance company first and then the police?

13 A. Then the police, yes.

14 Q. All right. And did you have a serial number to
15 give to them?

16 A. No.

17 Q. You hadn't recorded this serial number?

18 A. I just described the gun to them is all.

19 Q. So I take it from that you had never recorded the
20 serial of this gun, specifically?

21 A. No.

22 Q. And did they inquire of you for a serial number?

23 A. They just asked me if I had one and I told them no,
24 I didn't. I hadn't taken it down. See, I had that gun so long,
25 years ago, they never even thought of serial numbers.

1 Q Mr. Schreiber, are you familiar with the smell of
2 pot being smoked?

3 A Yes, I am.

4 Q During the four or five days prior to November 3rd,
5 1974, do you recall whether you encountered that smell in your
6 home?

7 A No, I never did.

8 MR. REMAKLUS: Going to object on the ground it's going
9 outside of the --

10 THE COURT: The answer may stand. He says he never did.

11 THE WITNESS: No, I never smelled any. Of course, I
12 wasn't there all the time. When the kids would be in one room
13 I'd be out in another room or I was downtown in the evening.
14 I'd go down and play pool and I played in the pool tournaments
15 down there. So, I wasn't home in the evening.

16 But, as long as I was there there was never anything
17 like that.

18 MR. ROBINSON: Your Honor, I have no further questions
19 at this time. I do want "Mr. Spaulding" reserved for recall on
20 the defense's case.

21 THE COURT: Any redirect?

22 MR. REMAKLUS: No, thank you.

23 THE COURT: You will have to remain to be called as a
24 later witness.

25 We'll take a ten-minute recess. If you will

1 remember the admonition, ladies and gentlemen, don't discuss the
2 case and keep your minds open.

3 (Recess taken.)

4 THE COURT: Show the jurors are all present.

5 Call your next witness.

6 MR. THOMAS: E. C. Palmer.

7
8 E. C. PALMER,

9 a witness produced on behalf of the State, having been first duly
10 sworn, took the stand and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q Would you state your name, please, and address,
15 please.

16 A Eldon C. Palmer.

17 Q Where do you reside?

18 A Boise, Idaho.

19 Q What is your occupation?

20 A I'm Sheriff of Ada County.

21 Q And how long have you been in that position?

22 A Three years.

23 Q Sheriff Palmer, would you tell the jury a little
24 bit about your law enforcement background.

25 A I've been in law enforcement for about 18 years. I

1 was a patrolman on the Boise Police Department, I went to the
2 rank of Sergeant, 15 years with that department and ran for
3 Sheriff of Ada County and presently employed there.

4 Q Have you ever seen or come in contact with the
5 defendant in this case before?

6 A Yes, I have.

7 Q Will you point out Thomas Eugene Creech in the
8 courtroom this afternoon?

9 A Gentleman in the brown shirt, witness table --
10 defendant's table.

11 MR. THOMAS: May the record reflect that the Sheriff
12 Palmer has identified the defendant, Your Honor?

13 THE COURT: Yes.

14 Q BY MR. THOMAS: When did you first come in contact
15 with Thomas Eugene Creech?

16 A November, 1974.

17 Q And what were the circumstances of that first
18 contact?

19 A He was moved to the Ada County Jail for security
20 reasons and there was a problem up in the jail. I was summoned
21 to observe and oversee the problem.

22 Q And did you in fact go into the jail on that occasion?

23 A Yes, I did.

24 Q What did you observe when you got there?

25 A Mr. Creech was lying on the floor, couple of officers

1 and jailers and other officers was there. Mr. Creech seemed to
2 be incoherent and was not responding, breathing shallow, seemed
3 to be having problems. I would say he was hyperventilating.

4 Q What happened then?

5 A I observed the officers working on him and talked
6 to him in attempting to communicate with him for some time.

7 We were not getting anywhere so I spoke to Mr. Creech,
8 told him to sit up and talk to me. I wanted to talk with him
9 and he responded.

10 Q How did he respond?

11 A He came around, sat up and talked with me.

12 I advised him that I thought he was faking and if
13 he didn't knock it off that I would place him in solitary
14 confinement.

15 Q And did he then continue to talk to you?

16 A Yes, he did.

17 Q That was the first time you came in contact with him?

18 A Yes, it was.

19 Q Did you have any extended conversation with him at
20 that time?

21 A Not at that time I did not.

22 Q When was the next time you came in contact with
23 Mr. Creech?

24 A I don't remember the exact date that I came in
25 contact with him the next time.

1 Q What -- do you recall the nature of any subsequent
2 contacts that you had with the defendant after the one you've
3 just described?

4 A Yes, I do.

5 Q And what was that?

6 A Mr. Creech sent word down that he would like to talk
7 with me. I also accompanied a State investigator upstairs at
8 the jail proper to sit in on interviews with him.

9 Q When did this process begin; do you recall?

10 A I think that he had been in our facility two or
11 three days, a week, something like this, before I had my first
12 encounter with him and, then, continued on until the trial in
13 Cascade wherein he was transferred from our jail back to
14 Cascade and then back to Boise and then finally up here.

15 Q Between the time that you first came in contact with
16 the defendant and the time he was transferred here to Wallace,
17 did you have any conversations with him?

18 A Yes, I did.

19 Q Do you recall how many?

20 A No, I don't.

21 Q Can you give us any approximation?

22 A There was many conversations with him, I would say
23 as high as 100.

24 Q What was the reason that you had these conversations
25 with the defendant?

1 A. I was requested, on occasions, to talk with him;
2 by the defendant also after we got into the investigation. I
3 went up and talked to him to investigate the crime -- alleged
4 crime.

5 Q. How did he let you know that he wanted to talk to
6 you?

7 A. He would send me down written requests; also verbal
8 requests via the jail supervisor.

9 Q. What was the nature of these requests?

10 A. Generally he wanted to talk to me about the reason
11 that he was incarcerated.

12 Q. Now, did you have any occasion at any time,
13 Sheriff Palmer, during the time you talked to Mr. Creech; to
14 give him the Miranda Warnings?

15 A. On many occasions, I did.

16 Q. When did you start doing that?

17 A. The first time that I talked to him in reference to
18 the crimes.

19 Q. And what was the nature of the Miranda Warning that
20 you gave? Would you explain in specific terms?

21 THE COURT: Well, are you going to ultimately offer
22 substance of conversations?

23 MR. THOMAS: Yes, Your Honor.

24 THE COURT: I think this will need to be taken up out
25 of the jury before -- presence of the jury before those are

1 offered.

2 We will excuse you, ladies and gentlemen, while we
3 take this matter up. The Bailiff will advise you when we're
4 ready to proceed with you.

5 If you will remember the admonition, don't discuss
6 the case and keep your minds open during this absence.

7 (Jury left the courtroom.)

8 THE COURT: I would request that out of the presence of
9 the jury you lay a foundation as to voluntariness before, and
10 limit it to that. I'm not interested in you going to any
11 extraneous matter other than the voluntariness of any statements
12 you intend to offer.

13

14 VOIR DIRE EXAMINATION

15 BY MR. THOMAS:

16 Q Let me ask you to tell the Court, Sheriff Palmer,
17 what did you tell the defendant by way of giving him the
18 Miranda Warning?

19 A Generally speaking, I told him -- advised him of his
20 rights under the Idaho Code, United States Constitution, that
21 you don't have to speak to me, anything you say may and will be
22 used against you now or at a later time in the Court. You have
23 the right to an attorney, if you do not have money enough to hire
24 one, one will be appointed to represent you. You can stop
25 questioning or stop answering any time that you desire.

1 That was, basically, the warnings that I told him
2 and on numerous occasions.

3 If I might, it did become repetitious and
4 Mr. Creech said "Well, I know my rights and you don't have to
5 tell me this again" on different times.

6 Q Did there come a time, then, when you slacked off
7 giving the Miranda Warnings because of this suggestion from the
8 defendant that he understood them?

9 A Yes, it did.

10 Q Did this occur prior to April 28, 1975?

11 A Well, we gave him a warning on that date.

12 Q But had you given him several previous warnings
13 before that?

14 A Yes, I had.

15 Q Had he advised you before then that he understood
16 those rights?

17 A Yes, he had.

18 Q Did it appear to you that he understood his rights
19 when you gave it to him?

20 A Yes.

21 Q What kind of response did he give you when you gave
22 him his rights on these previous occasions?

23 A Well, generally, just in a friendly sort of manner,
24 well, you know, "I know my rights, if you want to talk, let's
25 just talk about it."

1 Q With respect to the date of April 28, 1975, did you
2 conduct a lengthy interview with him in the company of other
3 persons?

4 A Yes, I did.

5 Q And was that interview tape recorded?

6 A Yes, it was.

7 Q Who was present during the interview?

8 A Myself, defendant, Mr. Dykes. This was conducted
9 in the Detective Annex and I believe there was some detectives
10 that was around too, however, not in the room proper.

11 Q Where is the Detective Annex?

12 A That's located approximately a block and a half from
13 the Courthouse in Boise.

14 Q And Mr. Creech was taken there for this interview?

15 A Yes, he was.

16 Q Who was Mr. Dykes that you described?

17 A Mr. Dykes is a detective out of California.

18 Q Now, have you made an edited copy of the tape
19 recording that you made on the 28th of April, 1975?

20 A Yes, I have.

21 Q Do you have that with you here today?

22 A Yes, I do.

23 Q Did you personally record the original?

24 A Yes.

25 Q And is this edited copy an accurate transcription

1 from the original?

2 A Yes, it is.

3 MR. THOMAS: Your Honor, the edited copy conforms with
4 the material that we discussed in the court the other day when
5 we went over Exhibit A to the Plaintiff's Pretrial Brief with
6 the following exception.

7 We have included, at the beginning of this tape
8 recording, the material which begins on Page 47 referring to
9 Mr. Creech's rights to an attorney and starts with Sheriff Palmer
10 saying, "Hey, Tom, I had told your attorney that I would not
11 talk to you -- " and so on down.

12 Perhaps the best procedure would be to play the
13 tape at this time.

14 THE COURT: I don't need to hear the statement, I'm just
15 concerned about its voluntariness at this time; unless this is
16 part of your foundation of the voluntariness.

17 MR. THOMAS: The material on the tape at the beginning
18 portion, at least, is part of the foundation for voluntariness
19 because it indicates the Defendant's responses. It shows the
20 clarity of his response, shows the manner in which the
21 information was communicated to him and seems to us to be
22 relevant for that purpose.

23 THE COURT: I don't think that's really going to be the
24 issue on this particular statement. I think the issue is going
25 to be the fact that he had an attorney appointed at that time.

1 I think the Court record reflects that and I think the issue is
2 going to be how well he was advised of his rights and,
3 particularly, the right to have his attorney present at the
4 questioning.

5 I don't think the clarity of it or that has
6 anything to do with that. I think it's the substance of what
7 was said is the issue.

8 Q. BY MR. THOMAS: Sheriff Palmer, did you, subsequent
9 to the time of the receiving of or making this tape recording,
10 receive a communication to -- from Mr. Creech relating to
11 statements that he had given you prior to the date of the letter?

12 A. Yes.

13 THE COURT: Just a minute. I didn't want to put you off
14 completely on that. I'm wondering if -- only thing I was going
15 to suggest, I don't think I have to listen to the tape. If
16 you've got a transcript of it, I can read what was said and I'm
17 willing to do that; to avoid having to play the tape; unless
18 Mr. Robinson wants to hear it, to hear the tone of the voices
19 and that.

20 MR. ROBINSON: I will want to hear it, Your Honor, but I
21 also want an opportunity to interrogate and cross-examine the
22 Sheriff, basically on the foundation.

23 THE COURT: But I'm interested in the substance of what
24 was said myself.

25 MR. THOMAS: Yes. Well, the material that I referred to,

1 Your Honor, appears on Page 37 of Exhibit A to the Plaintiff's
2 Pretrial Brief.

3 THE COURT: Well, I have before me right now what we've
4 had marked here Exhibit 49 that's not to go to the jury,
5 admitted for limited purposes. This was admitted in connection
6 with our hearing as to deletion of certain parts of that.

7 I have turned to Page 47, I take it the first part
8 that you wanted to play to me was where it says, "PALMER" and
9 starts out, "Hey, Tom -- "

10 MR. THOMAS: Yes, that's correct.

11 THE COURT: Is that correct?

12 MR. THOMAS: That's the same document.

13 THE COURT: All right. For purposes of this voluntariness
14 hearing, if you want that entire document to be made a part of
15 the record --

16 MR. THOMAS: Yes, Your Honor.

17 THE COURT: Any objection, Mr. Robinson?

18 I take it beginning with Page 47, over --

19 MR. ROBINSON: May I inquire of the witness regarding
20 basically the foundation on the voluntariness of this statement,
21 Your Honor?

22 THE COURT: Well, I'm concerned now about having this
23 in lieu of playing the tape to evidence what Sheriff Palmer
24 actually said. Do you have any objection for that purpose?

25 MR. ROBINSON: And this is on Page 47 at the bottom;

1 "Let's go back to these Idaho cases"?

2 THE COURT: No, at the top where he says -- ten lines
3 down from the top starting there.

4 MR. ROBINSON: Yes, Your Honor, I do have an objection as
5 to its being voluntary and made at a time when he had counsel
6 appointed.

7 THE COURT: You don't understand what I'm talking about,
8 Mr. Robinson.

9 MR. ROBINSON: More than likely, Your Honor.

10 THE COURT: I'm not talking about admitting the
11 statement Mr. Creech made at that time. I'm talking about
12 in lieu of having the Sheriff sit here and play the tape to me,
13 or repeat what he said. My being able to read what
14 Sheriff Palmer said to Mr. Creech about his rights and what
15 Mr. Creech said to him about his rights.

16 MR. ROBINSON: Yes, I'm in agreement the Court can take
17 that from the transcript.

18 THE COURT: That's all I want to know at this time.

19 All right, I'll take cognizance of what appears in
20 the transcript regarding what the Sheriff said to Mr. Creech and
21 what Mr. Creech said to him about his rights and understanding
22 his rights and waiving those rights. Perhaps I could hand the
23 Sheriff what we have marked as Exhibit 49 and let him review
24 those remarks and just tell me whether they are accurately
25 transcribed.

1 Those are the parts. I want to know if they're
2 an accurate transcription of what he said and what you said.

3 THE WITNESS: Judge, they are accurate. At this time,
4 however, to clarify this I might explain something else if the
5 Court wishes.

6 THE COURT: Well, once we get this in I think they are
7 going to have some more questions they want to ask. I just want
8 to know as to the accuracy of this.

9 THE WITNESS: Yes, that is an accurate transcription of
10 this.

11 THE COURT: Okay.

12 All right, I'll say 49 has already been admitted
13 for limited purposes and I'll admit it for the further purpose
14 of considering the voluntariness of these statements and reflecting
15 what Sheriff Palmer said to Mr. Creech and what Mr. Creech
16 responded as far as his rights are concerned. At this point,
17 if you have any objection for that limited purpose, Mr. Robinson --

18 MR. ROBINSON: No objection for that limited purpose,
19 Your Honor.

20 THE COURT: All right. Go ahead, Mr. Thomas, with any
21 further foundation.

22 MR. THOMAS: Thank you, Your Honor.
23
24
25

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. THOMAS:

3 Q I believe I asked you a moment ago, Sheriff, if you
4 had received a letter from Mr. Creech. Do you have that with you?

5 A I have several letters that I've received from
6 Mr. Creech.

7 Q Is there one related specifically to a statement
8 that he had given you previously?

9 A Yes, sir.

10 MR. THOMAS: May I have that?

11 THE COURT: While the Sheriff is looking, let me just
12 tell Counsel I've noted in reading Sheriff Palmer's statement
13 on Page 47 to Mr. Creech, I notice he refers to having
14 Mr. Creech "Keeping in mind the rights that were read to you
15 previously in this taped interview."

16 I assume what he's talking about are the rights
17 that appear on Page 1 of that interview; that which is part of
18 this same exhibit and I'm wondering if Counsel would include
19 that in this same foundation.

20 MR. THOMAS: We'd move to do so, Your Honor.

21 THE COURT: I think --

22 MR. ROBINSON: I would include that in the foundation,
23 yes, Your Honor.

24 THE COURT: Very well. So we're talking about
25 "Initial Statement" by what's referred to as Dykes on Page 1

1 and statement by Sheriff Palmer on Page 47.

2 If there are any other statements referring to the
3 rights that were explained to Mr. Creech in that taped interview,
4 I'd like to have them referred to.

5 I might ask you, Sheriff Palmer, do you know of any
6 other places where the rights were explained during this
7 particular interview; other than Page 1 of this transcript and
8 Page 47 we've referred to?

9 THE WITNESS: Judge, I'm not sure whether they are on
10 this transcript or not, but there is another portion on here
11 that brought me to the point to talk to him about this and I'd
12 like to explain it to the Court if you so desire.

13 THE COURT: Very well.

14 THE WITNESS: Mr. Creech was not satisfied with his
15 attorney at that time and he wanted to fire him; the
16 court-appointed attorney and say "I want to talk to you about
17 this thing" and I -- and this has prompted me to say, you know,
18 I'll talk to you about it, Tom, but understand this, that you
19 have this attorney.

20 THE COURT: Is that in the transcript there someplace?

21 THE WITNESS: I don't recall whether it's in this
22 transcript or not, but, sir, it is a fact.

23 THE COURT: All right.

24 MR. THOMAS: There is another reference at Page 53 of
25 the transcript, Your Honor, by Sheriff Palmer of the defendant's

1 rights not to say anything.

2 THE COURT: All right. Have you found that letter?

3 THE WITNESS: Yes, sir, I have.

4 THE COURT: All right, those are all the questions I
5 have, then.

6 Go ahead, Mr. Thomas.

7 MR. THOMAS: Did you find the letter, Sheriff Palmer?

8 THE WITNESS: Yes, I have.

9 MR. THOMAS: Could we have this marked for identification?
10 This would be marked just for the purpose of this hearing at
11 this time; wouldn't it?

12 THE COURT: Yes.

13 (State's Exhibit No. 61 marked for identification.)

14 THE COURT: Well, yes, sir, we'll mark it 61, but it
15 will be marked not to go to the jury at this time.

16

17 VOIR DIRE EXAMINATION (Continued)

18 BY MR. THOMAS:

19 Q Now, Sheriff Palmer, this document that you handed
20 me has been marked for identification, for the purposes of this
21 hearing, as State's Exhibit 61. Would you tell the Court when
22 you received that document?

23 A Yes, it was received on June the 9th, 1975,
24 approximately 4:30 p.m.

25 Q And from whom did you receive it?

1 A. I don't recall whether I got this from Mr. Creech
2 or Mr. Segal. I believe I got it from Tom himself.

3 Q. Did it come in any kind of envelope?

4 A. Yes, it did.

5 Q. Do you have the envelope?

6 A. Yes, I do.

7 MR. THOMAS: If I may have, I'll have that marked for
8 identification.

9 (State's Exhibit No. 62 marked for identification.)

10 Q. BY MR. THOMAS: Sheriff Palmer, this envelope has
11 been marked for identification as State's Exhibit 62 for the
12 purposes of this hearing. Is that the envelope that the letter
13 came in?

14 A. Yes.

15 Q. What is the process by which prisoners in your
16 jail forward mail to you?

17 A. Normally they give them to our jail supervisor and
18 he would bring them on down to me; unless I am in the jail
19 proper and then the prisoners may hand me the letter. There is
20 -- or in this particular case, I believe the defendant was in
21 my office and handed it to me.

22 Q. Did he do that on any previous occasions, or
23 subsequent occasions?

24 A. Yes.

25 Q. Is this Mr. Creech's writing in this letter?

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A. Yes.

Q. You've seen the writing before?

A. Yes, I have.

Q. Do you recognize it as being this writing?

A. Yes, I do.

MR. THOMAS: I'd like to move, Your Honor, to admit it into evidence, at least for the limited purpose of his voluntariness at this time.

THE COURT: Have you seen it, Mr. Robinson?

MR. ROBINSON: No, I haven't, Your Honor.

(Brief delay.)

MR. ROBINSON: Correct the record, Your Honor, I have seen this letter prior to this date and my objection would go to the foundation, basically; whether or not it is voluntary and for what purpose it is given, the reliability of the same.

THE COURT: Well, would you hand it to me, Mr. Thomas?

MR. THOMAS: Yes.

MR. ROBINSON: I would add to that, Your Honor, it is unclear there as to specifically what portion of the multitudes of comments and statements that Mr. Creech made during some nine, ten months to Sheriff Palmer he is referring to.

THE COURT: Objection is overruled, Exhibits 61 and 62 will be admitted for purposes of this hearing on voluntariness, but not to go to the jury at this point, at least.

1 (State's Exhibits 61 and 62 admitted into
2 evidence.)

3 Q BY MR. THOMAS: On this particular tape Mr. Creech
4 talked to you about the murders which had been charged and
5 were pending in this trial?

6 A Yes, he did.

7 Q And did he appear to you at the time to understand
8 what he was saying?

9 A Yes, he did.

10 Q Did you have any doubt that he did?

11 A None at all.

12 Q Would you describe his demeanor in making any
13 confessions, or admissions to you that are on this tape?

14 A I would say he appears as he does today. He was
15 calm, collected, in good health, well in control of all his
16 faculties and appeared to understand everything that was going
17 on and communicated very well.

18 Q Was he at all hesitant in answering any questions
19 that you put to him?

20 A No.

21 Q Was there anything incoherent about his speech?

22 A No.

23 Q Did he appear to have any difficulty understanding
24 what you were asking him or what you were telling him?

25 A No.

1 Q How -- did you solicit this tape or this interview
2 in any way?

3 A Yes, in the beginning I asked him if he would like
4 to talk to the other detective, Mr. Dykes, and if he had any
5 objections to talking to him and he said not at all; that he
6 would. In fact, he wanted to come down and talk to him about
7 them -- about the investigation.

8 MR. THOMAS: I have no further questions, Your Honor.

9 MR. ROBINSON: May I inquire, sir?

10 THE COURT: You want these Exhibits?

11 MR. ROBINSON: No, I don't believe so, Your Honor.
12 I have copies.

13

14 VOIR DIRE EXAMINATION

15 BY MR. ROBINSON:

16 Q Sheriff Palmer, from the 9th day of November,
17 1974, up through and including the date of May 22nd, 1975,
18 were you specifically aware that Tom Creech was represented by
19 Ward Hower of Cascade, Idaho as court-appointed counsel?

20 A Yes, I was.

21 Q During this period of time that I'm specifically
22 relating to, the November '74 to May 22nd of '75, had you
23 inquired of Tom on many occasions and had question and answer
24 periods and interrogation of Tom on out-of-state involvements?

25 A Yes.

1 Q And on each of those occasions did you make
2 contact with Tom Creech's court-appointed counsel and advise
3 him that his client was desiring to talk with law enforcement
4 officers and request that attorney's presence?

5 A On many occasions, or numerous occasions, I wouldn't
6 say "many". On numerous occasions, that's less than many, I
7 called Mr. Hower and advised him that I was going to talk with
8 him and this became repetitious also and he told me to go ahead
9 and talk with him.

10 Q Did Mr. Hower, as counsel, ever inquire of you
11 the subject matter of what your conversations, or questions,
12 were going to be?

13 A Yes.

14 Q And what did you advise him?

15 A I told him that I was going to be talking with him
16 in reference to alleged homicides that happened outside of
17 Idaho.

18 Q And when you say "on many occasions" or
19 "numerous occasions", how many times had that occurred prior to
20 April the 28th, 1975?

21 A I don't know.

22 Q Would you give us your best estimate of numbers?
23 As many as 25?

24 A I really don't know, I'm sorry.

25 Q Could it have been that many?

1 A. No, I don't think probably that many. But, I just
2 don't remember how many times, you know, if you want to make a
3 guess and that's strictly what it is, I'll take a swing at it.

4 Q. Prior to April the 28th, the date of this typed
5 interview, had you made several out-of-state trips with
6 Mr. Thomas Eugene Creech to other states?

7 A. I don't remember the exact dates that I made
8 out-of-state trips with Mr. Creech. However, I did make them.

9 Q. Do you recall whether or not the plane crash
10 incident from -- a return from Barstow, California, had already
11 occurred prior to this April 28 trip?

12 A. I would have to refer to my notes to answer that.

13 Q. Please do.

14 A. If you'll state the question -- the trip that you
15 are talking about I made on April the 28th?

16 Q. No, it appears as though this transcript is dated
17 April the 28th, 1975.

18 A. That was not made outside -- that was prior to the
19 plane crash. This transcript was prior to that plane crash.

20 Q. All right. But, then, prior to this date you had
21 had Mr. Creech in the states of Montana and Wyoming and Nevada;
22 is that correct?

23 A. No.

24 Q. Which of those states?

25 A. I believe I had him in Wyoming and Montana.

1 Q Nevada came after this statement?

2 A I had him in Nevada when we crashed, that's where
3 we crashed. I didn't take him to Nevada on any particular
4 trip. We were -- just happened to be flying over Nevada. It
5 was strictly accidental that we wound up down there.

6 Q Then on the Stanton circumstance, Mr. Creech did
7 not accompany law enforcement officers to Nevada?

8 A No, he did not.

9 Q All right. And New Mexico, did that occur before
10 or after the trip to New Mexico; before or after this date of
11 April 28th?

12 A I don't remember the date we went to New Mexico.
13 I didn't go on that particular trip.

14 Q All right. Was Mr. Creech talking with you in
15 anticipation of taking these special trips and relieving
16 himself of the monotony of his incarceration in Ada County?

17 A No, I don't believe so.

18 Q In the period of time prior to April the 28th, 1975,
19 had you been advised by your employees, Lieutenant Segal,
20 one of your subordinates, to you, that Mr. Creech had been
21 spaced out and freaked out on many occasions?

22 A I wouldn't describe it as "spaced out" or
23 "freaked out" on many occasions. He had given us problems but
24 I wouldn't say spaced out or freaked out as you put it.

25 Q Did you have specific knowledge that he had received

1 LSD and other drugs while incarcerated in the Ada County Jail?

2 A. I don't believe he received LSD while in the Ada
3 County Jail. I know of possibilities of him having some
4 marijuana brought in to him while he was in there.

5 Q But no occasion prior to his being transferred to
6 Shoshone County; is that your statement? That he had never had
7 windowpane LSD while at the Ada County Jail?

8 A Not to my knowledge or, at least, best of my
9 recollection he didn't. I don't remember it.

10 Q And in this timeframe do you recall, or do your
11 records at the Ada County Sheriff's office show how many
12 specific occasions that Mr. Ward Hower, his attorney, called
13 upon Mr. Creech as the client and discussed his case and the
14 circumstances with him?

15 A I don't believe our records would show that.
16 However, they were few.

17 Q Pardon?

18 A However, they were few.

19 Q And do you recall specifically the duration of those
20 conferences?

21 A I don't remember exactly what the time was.

22 Q Did Mr. Creech make any representation to you
23 during this particular interview, or prior to this interview,
24 of April the 28th, as to the availability of his attorney?

25 A Yes.

1 Q And what were his comments in that regard?

2 A That he had not -- he wanted to see his attorney
3 on numerous occasions, his attorney had not responded. I think
4 he had sent a letter to the Court requesting this also.

5 Q Sheriff Palmer, both prior to this date of
6 April 28, 1975 and subsequent thereto, has Mr. Thomas Creech
7 lied to you on many occasions?

8 A Yes, he has.

9 Q Have you found it difficult to tell whether he was
10 telling you a factual truth and when he wasn't?

11 A Yes.

12 Q Sheriff Palmer, would you turn to Page 55 of the
13 transcript that you have and will you refer specifically --

14 THE COURT: Referring to Exhibit 49 for the record?

15 MR. ROBINSON: Yes, Your Honor.

16 THE COURT: All right.

17 Q BY MR. ROBINSON: Line 4 where Tom Creech starts,
18 "I really do think I should get a new lawyer because Ward Hower
19 is -- "

20 THE COURT: Give me the page and line again.

21 MR. ROBINSON: Fourth line, Your Honor, on Page 55.

22 Q BY MR. ROBINSON: And would you acquaint yourself
23 with the balance of that page down to the last line on the
24 ending of the interview?

25 A Yes.

1 Q Look up, now, Sheriff Palmer, and I assumed you
2 covered that territory on Page 55?

3 A Yes, I have.

4 Q All right. Now, is that generally the understanding
5 that you had of Mr. Creech's attitude towards his representation
6 at that time and his then court-appointed counsel,
7 Ward Hower?

8 A Yes.

9 Q Did you have that in mind when you made such -- and
10 have knowledge of that when you made such statements
11 commencing on Page 47 of the large paragraph in the center of
12 that page where you made comments regarding Tom's rights about
13 talking without his attorney being present on the Idaho
14 circumstances?

15 A Not all of this. I don't think that I was aware
16 of the "brain clipping" and so forth prior to this statement
17 at that time, or the attorney telling him that he had made a
18 deal.

19 I do remember -- or I do remember of him telling me
20 he wanted to fire his attorney and he wanted to get a new
21 attorney and that he had written to the Court requesting the
22 same. But, I don't remember these exact things until that time
23 and that place and that interview.

24 Q All right. And what you are just testifying to
25 that you did know of that general circumstance of the request

1 and desire to change attorneys? There had been a breakdown
2 between Mr. Creech and his attorney prior to the 28th day of
3 April, 1975 when this tape interview commenced?

4 A. That's correct.

5 MR. ROBINSON: May I inquire, Your Honor, whether or not
6 the Court was also reading the material on Page 55?

7 Q. BY MR. ROBINSON: Sheriff Palmer, would you --

8 THE COURT: Go ahead.

9 Q. BY MR. ROBINSON: Sheriff Palmer, are you, at this
10 point in time, familiar with the balance of the information
11 contained in the transcript of this interrogation on
12 April the 28th, 1975 when it refers to other circumstances
13 out of state; subject matter when Dykes --

14 A. I was there during the entire interview. I don't
15 remember the exact words and so forth in the transcript. I
16 have read it, but I couldn't tell you exactly what's in it now.
17 It's quite a lengthy transcript.

18 Q. All right. Recalling what you do of the interview
19 and this transcript, are there many other circumstances related
20 to in that transcript that were representations made by
21 Tom Creech that were not true?

22 A. Yes.

23 Q. And have you, as a law enforcement officer, attempted
24 to take those representations and corroborate, or verify them
25 as to truth or falsity?

1 A Yes, I have.

2 Q And is that the basis of your now saying that
3 the many of the other circumstances related to in that
4 transcript are false?

5 A Yes.

6 Q Do you feel that this information contained on
7 Page 47, 48 and 49 are any more reliable than the other
8 information that you know to have been proven false?

9 MR. THOMAS: Objection, Your Honor. I don't think the
10 reliability of this information from the standpoint of truth
11 or falsity of other statements in the transcript affects the
12 voluntariness of it.

13 THE COURT: Sustained.

14 MR. ROBINSON: Your Honor, just one other area of
15 inquiry. Could the witness then have this Exhibit?

16 THE COURT: Yeah, it's right here if you want it.

17 Q BY MR. ROBINSON: Turn to that page, Page 47, if
18 would, Sheriff Palmer, and up the fourth line where you said,
19 "So, do you want to talk about these?"

20 Were you referring there to the Idaho deaths of
21 Arnold and Bradford?

22 MR. REMAKLUS: What page are you on, please.

23 MR. ROBINSON: Page 47, fourth line from the bottom.

24 MR. REMAKLUS: Thank you.

25 THE WITNESS: "Do you want to talk about these?"

1 Q BY MR. ROBINSON: Yes. Yes, does that specifically
2 refer to the Idaho deaths of Arnold and "Palmer"?

3 A Arnold and Bradford.

4 Q I'm sorry, Arnold and Bradford, yes.

5 A Yes, I was referring back to my previous statement
6 there.

7 Q That appears just up from there on this page?

8 A Yes.

9 Q All right. And the response of Tom Creech was,
10 "I don't care."

11 A That's right.

12 Q Was that his general attitude of responding to
13 your questions about the two Idaho deaths?

14 A No, I thought he did care. In fact, I thought he
15 was very interested in it and I thought he put forth a lot of
16 effort on it. I think he did care. I don't think he really
17 meant "I don't care".

18 I think that -- in that particular instance when
19 he said "I don't care" he meant that he was willing to talk
20 to me about them. It's like I might say to my son, "Do you
21 want some candy"? And he said "I don't care." But, he did
22 want it.

23 I think that's what he --

24 Q Was Tom Creech at this time making statements and
25 responding to questions asked him in expectation of reward,

1 special treatment or trips out of state?

2 A. No, I don't think so.

3 MR. ROBINSON: Nothing further, Your Honor.

4 THE COURT: Anything further?

5 MR. THOMAS: No redirect, Your Honor.

6
7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Sheriff, I'd like you to explain to me what you
10 mean by the first sentence in -- starting with "Hey, Tom, I
11 had told your attorney -- "

12 Could you tell me what you had told his attorney
13 and what you meant by that?

14 A. Yes, sir, I can. I had talked with his attorney
15 and his attorney did not want me to talk to him about the
16 Idaho cases without him being present. I told Tom, "Hey, Tom,"
17 like it says here, "I told your attorney I would not talk to
18 you without your rights and so forth about the Idaho cases."
19 And that's exactly what I meant and when he told me that he
20 wanted to fire his attorney, that he wanted to talk to me
21 about this Idaho case and that he didn't want him there, I
22 agreed to talk with him. I took it that he meant exactly what
23 he said in that case.

24 Q. Did you have any conversation with him about firing
25 his attorney before this -- in this particular interview this

1 conversation about firing his attorney came after the statement,
2 not before it, now?

3 A Yes, I had a previous conversation with him up in
4 the jail proper prior to this statement about that. He was
5 rather unhappy with his attorney.

6 THE COURT: Counsel want to inquire further?

7 MR. THOMAS: I would like to ask another question if I
8 may, Your Honor.

9 Sheriff Palmer, did you initiate the idea that
10 Mr. Creech should fire his attorney in any way?

11 THE WITNESS: No, I did not.

12 MR. THOMAS: That's all I have.

13 THE COURT: Any further cross-examination?

14 MR. ROBINSON: Yes, just on that point alone,
15 Your Honor.

16
17 FURTHER VOIR DIRE EXAMINATION

18 BY MR. ROBINSON:

19 Q Sheriff Palmer, for how long prior to this date of
20 April the 28th, 1975, had you been aware of the conflict
21 between Tom Creech and his then appointed Public Defender,
22 Ward Hower?

23 A I don't remember the exact length of time, but it
24 was some time, a week or so prior to that. I'm guessing, again,
25 but prior to that.

1 Q During that period of time had you made any
2 attempt to contact the attorney, Ward Hower in Cascade,
3 regarding this conflict?

4 A No, I believe I contacted the Court and --

5 Q Was that before or after Tom Creech had written
6 some correspondence to the Court regarding a change of counsel
7 or a desired change of counsel?

8 A This was after he had written and I'm trying to
9 keep the sequences right and I think I have, I'm not sure.

10 Q All right. During this period of time who was
11 Tom Creech getting his legal advice from; if he was getting
12 any, and if you know?

13 A The only legal advice that I ever know Mr. Creech
14 receiving was from his attorneys or his friends in jail.

15 Q Other inmates, you mean?

16 A Yes.

17 MR. ROBINSON: No further inquiry to make there,
18 Your Honor.

19 MR. THOMAS: Nothing further, Your Honor.

20 THE COURT: All right, you may step down.

21 Any further evidence on voluntariness?

22 MR. THOMAS: No further evidence. If the Court would
23 like to hear argument on the matter.

24 THE COURT: Well, I'd like to hear, first, whether
25 Mr. Robinson has an objection.

1 MR. ROBINSON: Yes, I do have an objection as to the
2 entry of this testimony at this time, basically because the
3 lack of foundation that it is voluntary and made without
4 coercion or deprivation or promise or reward, basically
5 surround circumstances that Mr. Creech found himself in at that
6 time to make any voluntary statement.

7 THE COURT: You can step down.

8 All right, I'll hear argument Counsel have on this.

9 MR. THOMAS: Thank you, Your Honor.

10 If the Court please, the question here is whether
11 or not Mr. Creech could be interviewed properly by
12 Sheriff Palmer and others after he had an attorney appointed.
13 The State submits this question goes only to the question of
14 voluntariness; whether he made a voluntary statement.

15 The Miranda Ruling does not require any, per se,
16 finding that once a defendant has an attorney appointed for
17 him he is no longer able to waive the right to make statements
18 to law enforcement investigators without having the attorney
19 present. I would call the Court's attention to the case of
20 Moor versus Wisconsin, found at 495 F.2d 35, a case decided
21 last year.

22 In that case the defendant was taken into custody
23 and arraigned on felony charges and an attorney was appointed
24 for him and later, after an attorney had been appointed, a
25 detective questioned the defendant having knowledge that the

1 defendant had an attorney appointed for him. The defendant's
2 confession in this case was admitted against him. The Court
3 said if an accused can voluntarily, knowingly and intelligently
4 waive his rights to counsel before one has been appointed there
5 seems no compelling reason to hold that he may not voluntarily,
6 knowingly and intelligently waive his right to have counsel
7 present at an interrogation after counsel has been appointed.

8 The same holding appears in Coughlin versus
9 United States, a decision of the Ninth Circuit Court of Appeals
10 in 1964. I believe that appears at 391 F.2d 371. Certiorari
11 was denied by the Supreme Court of the United States at
12 393 U.S. 870 and 89 Supreme Court Reporter 159.

13 In that case the defendant gave an oral confession
14 in an interview room at the jail at a time when he was
15 represented by counsel when his attorney was not given notice
16 of the interview. The police knew that he was represented by
17 counsel. It was determined by the Court that he voluntarily
18 gave such a statement and the Court of Appeals in this case held
19 there's no, per se, rule to the effect that a waiver of counsel's
20 presence could never be truly voluntary unless counsel was
21 present to advise on it.

22 The question also is, is it voluntarily, knowingly
23 and intelligently waived and not whether counsel was present.

24 The same effect is the case of State versus Richmond,
25 appearing at 533 P.2d 553, decided by the Arizona Appellate

1 Court in 1975.

2 The case of State versus Vidal, 508 P.2d 158 cited
3 by the Supreme Court of Washington in 1973 in which a defendant
4 was being transported from Wallace, Idaho to Tacoma, Washington
5 in an automobile after an attorney had been appointed to
6 represent him in Idaho. During the automobile trip he gave a
7 number of incriminating statements. The Court in that case found
8 that the statements had been voluntarily given and it was not
9 significant that an attorney was not present at the time that
10 the statements were made during the automobile trip.

11 I would also call attention to the wording used.
12 Mr. Robinson has asked some questions about the meaning of the
13 words, "I don't care" in response to the question "Do you want
14 to talk about these", referring in the context to the murders
15 of Bradford and Arnold.

16 There is no -- as the Arizona Appeals Court has
17 said, there is no significant words required to prove a waiver
18 of constitutional rights. That case appears at 533 P.2d 533.
19 It was decided in 1975.

20 The Illinois Appellate Court at -- in People versus
21 Carbona, C-a-r-b-o-n-a, at 327 N.W. Reporter 2d, Page 546 held
22 that the test is -- the test of a knowing waiver is a showing
23 of knowing intent; which is determined not only by the language
24 employed, but also by a combination of that articulation, the
25 surrounding facts and circumstances. It depends on the context

1 in which the language appears and when a person is asked
2 "Do you want to talk about these crimes" and he says, "I don't
3 care", that, obviously, in the context of the statement made,
4 means yes and in the context of all of this the defendant has
5 shown to have given a knowing and intelligent waiver.

6 Furthermore, this defendant had numerous, if you
7 will, warnings repeated over and over again from the time of
8 his arrest. He knew his rights and there isn't any question
9 about that. It's been held in a number of cases that once a
10 full and complete knowing waiver has been given it's not
11 necessary to keep repeating the Miranda Warnings every time
12 after that; whenever an interrogation is given.

13 I just would like to further refer the Court to a
14 few of those cases. One of them is Commonwealth versus Klinger,
15 decided by the Supreme Court of Pennsylvania in 1975. It
16 appears at 337 Atlantic 2d 69; case of State versus Allen at
17 535 P.2d, Page 3, decided in Arizona in 1975; case of Moore
18 versus Hopper at 389 Fed. Sup. 931, decided by District --
19 Federal District Court in Georgia in 1974 and McGuire versus
20 United States at 396 F.2d 327 decided in the Ninth Circuit in
21 1968; United States versus Otterburg, O-t-t-e-r-b-u-r-g,
22 423 F.2d 704 decided in the Ninth Circuit in 1970, certiorari
23 denied by the Supreme Court of the United States; State versus
24 Gilreath, G-i-l-r-e-a-t-h, 482nd P.2d 385 decided by the Arizona
25 Supreme Court in 1975, certiorari was denied in that case.

1 The standard of proof of voluntariness in a hearing
2 of this kind is that the voluntariness of the statement be
3 proved only by a preponderance of the evidence. That rule was
4 set out by the United States Supreme Court in *Lego versus Twomey*
5 at 404 U.S. Reports 477, 92 Supreme Court Reporter 619. We
6 think, Your Honor, that the State has made a sufficient showing of
7 voluntariness of this statement; that it should be admitted.

8 It is obviously probative and relevant to the issues
9 in this case. There is no doubt the defendant knew what he was
10 doing, voluntarily gave this statement and it should not be
11 excluded from evidence.

12 MR. ROBINSON: If it please the Court, our objection,
13 Your Honor, I'm sure the Court can see just on the surface of
14 it, is based upon the attorney-client relationship then in
15 existence that had degenerated to the point of a total break-up
16 with Tom Creech feeling the total futility of having any
17 reliable legal advice from the attorney that had been appointed
18 to represent him; that those conferences had been few and far
19 between and duration short whenever the contact actually had
20 been made, as it manifested itself some week or so prior to this
21 particular statement.

22 It had degenerated to the point that the language
23 used, approximately six pages after this where Mr. Creech had
24 even there related to Mr. Palmer, his questioner, that his
25 attorney had the attitude that Tom should be executed and even

1 making recommendations that if he's convicted of second degree
2 that he would get him full life sentence -- hopeful for a
3 full life sentence without possibility of parole at all and that
4 his attorney was prejudiced against him.

5 That, coupled with Sheriff Palmer's testimony that
6 many of the surrounding circumstances that are part of this
7 transcript occurring at the same time were non-truths and maybe
8 this only would go to the weight and not as to the
9 admissibility of a later statement being made on the subject
10 matter of the Idaho deaths. But, that at this time comments
11 were made in expectation of special treatment, reward or
12 benefit and not a total voluntary statement on the part of
13 Mr. Creech.

14 From what I read there we are not in any new
15 ground in addition to the voluntary statement of November 8,
16 1974 or new ground that wasn't stated by Carol Spaulding on
17 that same date in November of '74; but rather this is being
18 offered only that some six months later, five to six months
19 later, that the same story is continuing and at this point the
20 voluntariness of these comments being made in answer to
21 questions, I don't believe has been carried by the State by the
22 preponderance that they must show in the foundation of
23 voluntariness; especially under the specific circumstances that
24 we have in this unique case.

25 THE COURT: Well, I think the objection that -- as to the

1 accuracy of truthfulness of the statement, his -- actually that
2 goes to the weight and not to the voluntariness or the
3 admissibility of the statement. So, I would overrule that
4 objection.

5 I think there's been no showing of coercion or
6 threats or promises. If there were any question about that at
7 all I think the letter written by Mr. Creech, apparently, simply
8 on his own without encouraging or anything else, in June of '75
9 reaffirming that all these statements that he's given to
10 Sheriff Palmer, Bud Mason and Dr. Heyrend and the psychologists
11 were free and voluntary and without any threats or promise and
12 of his own free will would negate any question at all, if there
13 were any, about coercion or pressure or threats of any kind.

14 The sole point I'm concerned about is the point of
15 whether he was fully and adequately advised of the right to
16 have his attorney that was then representing him present during
17 the questioning and whether he affirmatively and clearly waived
18 that right.

19 Now, I think that's essential. I think that's
20 essential under all the cases that Mr. Thomas cited. I think
21 in those cases there was no question of a clear and affirmative
22 clear-cut waiver and clear-cut advice of that right.

23 I don't find this case that clear-cut. I think it's
24 equivocal. Number one, Sheriff Palmer says -- and this, of
25 course, I appreciate wasn't an agreement with Mr. Creech, it was

1 an agreement with defense counsel himself. But, the agreement
2 was that he would not talk to Mr. Creech about the Idaho cases
3 and that the attorney did not want him to talk to him about the
4 Idaho cases.

5 Now, I think to me this has a material bearing on
6 the kind of advice that has to be given when you are going to
7 get Mr. Creech to waive that right and I think it has -- it can't
8 be left equivocal or ambiguous in any way.

9 Now, I appreciate there was a rather clear-cut
10 explanation of the rights given at the beginning of this
11 April 28th interview by the investigative detective from
12 California, Mr. Dykes. However, that dealt with the incidents
13 in California and not with the Idaho incidents.

14 When the switch-over came to talk about the Idaho
15 incidents there was just a -- simply reference back to those
16 rights. There was no representation of them, no emphasis of
17 his right to have his Idaho attorney present and, then, I don't
18 find this statement "I don't care" that equivocal and clear-cut
19 a waiver that I think Miranda requires. I think that's
20 ambiguous.

21 I would interpret that as meaning he'd do whatever
22 the Sheriff wanted him to do, really. I'm going to sustain the
23 objection that -- on the finding that he was not adequately
24 advised of his rights then at that time when the Idaho cases
25 were starting to be -- he was starting to be questioned about the

1 Idaho cases. He was not adequately advised of his rights and
2 did not affirmatively waive those rights to counsel at that
3 point.

4 I'm going to do this with it and I would say this
5 about the authority on this: I accept, basically, Mr. Thomas'
6 statement that the majority rule is that the fact that a
7 defendant is represented by counsel at the time he's questioned
8 does not, per se, render those questions inadmissible. I think
9 there isn't any question that's the majority rule. I would
10 also note, though, just in passing that there were substantial
11 dissents in several of those cases and that there are cases that
12 go the other way. There's at least one Circuit Court that's
13 gone exactly the other way. New York has gone the other way.

14 Those cases held that you simply can't talk to him
15 once he has his own his attorney without having that attorney
16 present, or having that attorney consent to be -- not to be
17 present. I don't particularly adopt that rule, that's not the
18 basis of my ruling, I want Counsel to understand that. I would
19 go with the majority rule if there was a clear-cut advice of
20 his rights in this case at the time the Idaho cases were
21 starting to be questioned. I mean, the questioning turned to
22 the Idaho cases. If there was a clear-cut advice of his rights
23 right at that point and a clear-cut waiver then I would accept
24 the majority rule. But, I don't find that that existed.

25 I would advise Counsel, for their own advice and how

1 you want to handle this, I feel that under the very recent
2 United States Supreme Court case of Oregon versus Hoss that
3 this statement could be used for impeachment if the defendant
4 takes the stand and gives contradicting testimony.

5 I'm not saying that by way of threats or compulsion,
6 I'm just advising Counsel of what I understand the law to be and
7 the state of the law and at that point that would be my ruling;
8 that this statement would be admissible for impeachment
9 purposes under that Oregon case. That went to the United States
10 Supreme Court, the Hoss case; which is either a 1975 case or
11 '74 case.

12 MR. THOMAS: Your Honor?

13 THE COURT: Yes.

14 MR. THOMAS: I take it you overruled our --

15 THE COURT: I've sustained Mr. Robinson's objection at
16 this point, yes.

17 MR. THOMAS: For the record the State would object to
18 the exclusion of this proffered evidence on the ground that no
19 timely motion to suppress was made and that right to have the
20 evidence excluded was waived.

21 THE COURT: Well, as far as I understand, that would
22 preclude Mr. Robinson from trying to put on contradictory
23 evidence, or controverting evidence; which he hasn't even
24 proffered here. I don't think the failure to make a motion to
25 suppress waives the requirement that the foundation would show

1 it's voluntary and the adequate warning given. I don't think
2 that foundation has been laid.

3 Are you ready to proceed to another subject with
4 Sheriff Palmer, or with another witness or how?

5 MR. THOMAS: No, Sheriff Palmer's testimony is entirely
6 based on this material. We would now wish to proceed to
7 Mr. Mason's testimony which involves another confession made in
8 the plane during the plane crash and perhaps the Court would
9 prefer that we move on to that now out of the presence of the
10 jury; to determine whether Mr. Mason can testify.

11 THE COURT: Yes, as long as we have the jury out we
12 might as well take that up.

13 MR. ROBINSON: Your Honor --

14 MR. THOMAS: Call Mr. --

15 MR. ROBINSON: I'd like the record to show that
16 Sheriff Palmer is, at this time, being dismissed by the
17 State for further examination; that I have not had an opportunity
18 of cross-examination that has occurred in the presence of the
19 jury and further that I do desire to retain Sheriff Palmer under
20 subpoena for presentation in the defense's case.

21 THE COURT: Very well.

22 Well, I think when we get the jury back in you can
23 proceed with your cross-examination as to the matters that were
24 covered, if you wish to.

25 MR. ROBINSON: Your Honor, perhaps I'm being presumptuous,

1 but it is quarter after 4:00, this, probably, will take 15
2 minutes. The Court has previously today set another hearing at
3 4:30 regarding Carol Spaulding. If this is the case and it takes
4 that length of time, perhaps there would be no need of keeping
5 the jury here at this hour; allowing them to return to their
6 quarters.

7 THE COURT: Well, that's probably a good idea.

8 MR. REMAKLUS: I would agree, Your Honor.

9 THE COURT: Want to bring the jury in?

10 Let's proceed with Mr. Mason. I would just ask
11 Counsel when the jury starts going out, just stop the questioning
12 for a minute until they get out.

13 MR. THOMAS: Yes, Your Honor.

14 (Whereupon the jury filed through the courtroom and
15 was excused for the evening.)

16
17 ALVIN R. MASON,
18 a witness produced on behalf of the State, having been first
19 duly sworn, took the stand and testified as follows:
20
21
22
23
24
25

VOIR DIRE EXAMINATION

BY MR. THOMAS:

Q. State your name and address, please.

A. Alvin R. Mason. I live in Boise, Idaho.

Q. And what is your position, Mr. Mason?

A. I'm Chief of the Bureau of Narcotics for the State of Idaho.

Q. Was that your position on November 5, 1974?

A. I was an investigator with the Department of Law Enforcement.

Q. Were you involved with the investigation of the charges against Thomas Eugene Creech on that date?

A. Yes, I was.

Q. Did you subsequently become involved in discussions with Mr. Creech in the taking of the statement from him?

(Brief delay.)

Q. BY MR. THOMAS: Mr. Mason, I repeat my question. Were you subsequently involved in the taking of the statement and in discussions and conversations with the defendant, Mr. Creech?

A. Yes, I was.

Q. And were you on the 4th day of May, 1975, traveling in an aircraft with Mr. Creech?

A. Yes, I was.

Q. Who else was present in the aircraft at that time?

1 A. Sheriff Palmer, Tom Taylor, a Deputy Sheriff from
2 Ada County and Tom Ambrose, the pilot, myself.

3 Q. Is it correct, Mr. Mason, that that plane crashed?

4 A. Yes, it did.

5 Q. And would you state what happened?

6 A. Why it crashed? I'm not sure of the question.

7 Q. Yes, go through the -- tell us why the plane went
8 down.

9 A. One of the passengers, Tom Taylor, was unable to
10 breathe and he was sitting in the back seat. I attempted to
11 get him breathing again, it's a very small aircraft. I
12 couldn't move around in it to get to him, tried to force
13 oxygen in him, in his mouth and tried to get him to breathe
14 again. He wasn't responding at all; reported this to the
15 Sheriff and also to the pilot. It was decided that we'd better
16 get down to a lower altitude so Mr. Taylor could regain his
17 breathing.

18 We did, then descended to a lower altitude.
19 Mr. Taylor still refused to respond to any oxygen or any
20 treatment that I could render to him. It was decided at that
21 time that we would land.

22 As we came down through the clouds we broke out into
23 a little valley, there was snow on the ground, we broke out
24 right on top of a dirt road where, evidently, the -- some cattle
25 had been up that early morning and removed the snow from it and

1 it was a black strip. We set down on that road, at the time we
2 set down it was snowing, had a cross wind of 25 or 30 knots,
3 there was quite a bit of mud, it was sticky. One of the wheels
4 -- one of the landing gears hit a culvert, folded up the landing
5 gear and we crashed.

6 Q And what -- where was Mr. Creech in the plane at
7 this time?

8 A He was sitting by me.

9 Q What was his reaction to the crash?

10 A Pretty upset about it.

11 Q How did he manifest that?

12 A He became very nervous, excited, on the verge, I
13 think, of maybe breaking down to tears somewhat.

14 Q Was he able to carry on a conversation with you
15 after that time?

16 A After we got settled down, yes.

17 Q How long did it take to get settled down after the
18 plane crash?

19 A I think when we determined that everybody was
20 uninjured seriously and that Mr. Taylor began breathing again,
21 he was taken from the plane and began breathing, he became --
22 on his own again so-to-speak, and probably 15 or 20 minutes.

23 THE COURT: We will take a ten-minute recess at this time.

24 (Recess taken.)
25

VOIR DIRE EXAMINATION (Continued)

BY MR. THOMAS:

Q Did you have a conversation with Mr. Creech after this period of time?

A Yes.

Q Were you asking him any questions about the murders of Arnold and Bradford at any time during the time you were discussing?

A Not at all.

Q What was the nature of the conversation that you had with Mr. Creech?

A I asked him if he was hurt, how he was getting along, if he was cold. Mundane conversation.

Q Where did this take place?

A At the site of the plane crash and inside the plane.

Q Where were you sitting and where was he sitting?

A I think Tom Creech was setting on my right and I was setting next to him. He had changed seats. He got up in the front seat of the plane -- I set up in the front seat of the plane and he set in the back seat of the plane, different places in the plane and also out on the old road.

Q Did he make any statement to you regarding the killings of Arnold and Bradford?

A Yes, he did.

Q What was that statement?

1 A. He said "This really made a Christian out of me.
2 I didn't have any reason to kill those guys, the jury ought
3 to find me guilty."

4 Q. Did he say anything else, words to any other effect
5 during that conversation?

6 A. There was other conversation.

7 Q. I mean, related to this specific conversation. Did
8 he say anything about whether he had had any previous thoughts
9 about killing these people or not?

10 A. Not that I can recall.

11 Q. What was the full discussion, if you would, when
12 he gave you this statement?

13 A. The nature of the discussion?

14 Q. Yes. How did the discussion start out in the first
15 place?

16 A. Just "really made a Christian out of me".

17 Q. Did you ask him -- any comments to him about that?

18 A. Regarding the Bradford-Arnold murders?

19 Q. Yes.

20 A. No.

21 Q. Or anything else? Did you make a remark previous
22 to Mr. Creech's saying "This made a Christian out of me"?

23 A. I was happy we were all alive and I think
24 Mr. Creech was too.

25 Q. Then go on, if you would, Mr. Mason. I'm a little

1 confused now about exactly where you are. You said you started
2 out with him saying that this occurrence made a Christian out
3 of him --

4 THE COURT: I know what it is, I've got it written down,
5 you don't need to have him repeat it for me.

6 Q BY MR. THOMAS: What happened next? What happened
7 after that?

8 A Well, about that time we had a radio turned on
9 because we had broken radio contact and didn't know exactly
10 where we were. The pilot had gone in one direction and
11 Sheriff Palmer had gone in another direction seeking help
12 leaving me there with Tom Creech and Tom Taylor.

13 About that time I heard an airliner give his
14 altitude of about 30,000 feet, he was talking to Salt Lake City.

15 Q What was Mr. Creech's behavior like during this
16 time; during the time he gave you the statement he gave you
17 described a few moments ago?

18 A Well, like it is now.

19 Q Did he seem in any way -- was there anything
20 unusual about the manner in which he was speaking?

21 A No, it was -- he volunteered the statement, I
22 listened.

23 Q With respect to the statements, do you know what
24 events he was referring to when he said he had no reason to
25 kill those guys?

1 A. I assumed he was talking about the Bradford-Arnold
2 murders in Donnelly.

3 Q. What makes you believe that?

4 A. I'm an Idaho officer and he was arrested for that
5 particular crime.

6 Q. He didn't use their names?

7 A. No.

8 MR. THOMAS: I have no further questions, Your Honor.

9 MR. ROBINSON: May I inquire, sir?

10 THE COURT: Yes.

11
12 VOIR DIRE EXAMINATION

13 BY MR. ROBINSON:

14 Q. Mr. Mason, you and Sheriff Palmer,
15 Sergeant Tom Taylor of Ada County Sheriff's office,
16 Tom Creech and a pilot had been in Barstow, California; is
17 that correct? That's where you were returning from?

18 A. That's correct.

19 Q. And there you were looking into mines and honeycombs
20 of tunnels for several bodies; is that correct?

21 A. That's correct.

22 Q. And this occurrence that we're speaking of here
23 took place on the flight home?

24 A. That's correct.

25 Q. First of all, on that excursion out of state into

1 Barstow, California, had the bodies been found?

2 A. What bodies are we talking about?

3 Q. The one in Barstow, California.

4 A. No.

5 Q. Was this the first out-of-state trip that you had
6 gone on with the Sheriff and Tom Creech?

7 A. First out-of-state trip I went on with the
8 Sheriff and Tom Creech.

9 Q. Was it the first that you had gone out of state
10 with Tom?

11 A. No.

12 Q. How many others before this had you gone on with
13 him?

14 A. One other.

15 Q. Where was that to?

16 A. Albuquerque, New Mexico.

17 Q. And when was that?

18 A. I believe it was the latter part of March. I'd
19 have to check my --

20 Q. March of '75?

21 A. Yes, sir.

22 Q. Now, wasn't it a fact that this plane crash
23 occurred after the plane had been traveling at 10,000 feet and
24 the pilot had encountered weather and suggested to
25 Sheriff Palmer that he take back over the plane's control,

1 Sheriff Palmer was flying it, and tried to climb around the
2 thunderheads and went up to 14,000 feet and that's when
3 Sergeant Taylor started turning blue on a shortage of breath
4 up to there. Is that what occurred?

5 A. I think we had been traveling at about 14,500 with
6 Sheriff Palmer at the controls.

7 Q. And then you climbed from that point or
8 Sergeant Taylor just started turning blue?

9 A. The Sergeant at this time already asked me for the
10 oxygen and I handed him the oxygen.

11 Q. All right. And the seating arrangement at that
12 time was, the pilot in the pilot's seat, Sheriff Palmer in the
13 co-pilot's seat, behind the pilot Sergeant Taylor, behind
14 Sheriff Palmer, Tom Creech, and you were in the back jumper
15 seat; is that correct?

16 A. No, that's not correct.

17 Q. All right. What was the seating arrangement?

18 A. Pilot was in the pilot's seat, Sheriff Palmer was
19 sitting beside the pilot, I was sitting directly behind the
20 pilot, Tom Creech was sitting behind the Sheriff, Tom Taylor
21 was sitting behind Tom Creech.

22 Q. All right. And this is where everyone was when
23 Sergeant Taylor had a shortage of breath necessitating putting
24 the plane down on the ground.

25 A. Is that a question?

1

Q Yes.

2

A Yes.

3

Q All right. And when you came in for a landing the landing was made "hot", at about 120 miles an hour?

5

A Yes.

6

Q And the right wheel was over into the barrow pit area because of the being buffeted by these crosswinds; is that correct?

9

A We got blown off the road, yes.

10

Q This is when the right wheel collapsed and it flipped up on the nose wheel, collapsed, it flipped on its nose, settled back down and the right wing was in a pond of water over to the right?

14

A More or less, yes.

15

Q And time ensued and everyone got out of the plane immediately for fear of fire?

17

A No, that's not so.

18

Q What happened immediately after the plane settled down?

19

A Immediately after the plane stopped, I kicked the door open on the pilot's side and I drug Sergeant Taylor out of the back seat and out onto the road and saw that he was still alive. Then I went back and got Tom Creech and pulled him out of the plane.

24

25

Q At that time did you uncuff him and take the cuffs

1 off of the belly choke?

2 A. No.

3 Q. Had Sergeant -- Sheriff Palmer already done that?

4 A. No.

5 Q. When was that done?

6 A. The next one out of the plane -- I went back to
7 check the pilot and Sheriff Palmer and Sheriff Palmer was the
8 next one out of the plane. I saw that he was navigable, he got
9 out of the plane on his own and he, at that time, took the
10 handcuffs off of Tom Creech.

11 Q. All right. Then all five of you were standing out
12 alongside the plane -- or away from it, assisting Sergeant Taylor
13 to recuperate?

14 A. Yes.

15 Q. What were the weather conditions?

16 A. Cold.

17 Q. Rainy and snow?

18 A. Snow, rain, wind.

19 Q. How long a period were you out there before you got
20 back into the plane for shelter?

21 A. I had taken my jacket off and thrown it around
22 Tom Creech right immediately after I took him out of the plane.
23 So, we stood out in the roadway for several minutes before we
24 went back into the plane.

25 Q. "Several minutes" meaning how many?

1 A. Maybe five or six minutes.

2 Q All right. And then you got back into the airplane,
3 all five of you?

4 A. No. I think the Sheriff and the pilot stayed
5 outside. The pilot had a bloody nose and his mouth was
6 bleeding. He stayed outside several minutes later, then
7 Sheriff Palmer went down -- would be the east, towards the
8 east on the road looking for help. The pilot waited there for
9 another five or six minutes, I would say, after Sheriff Palmer
10 left. Then he left to the west.

11 Q Who was in the plane when Tom Creech reached down
12 and picked up the .357 magnum, loaded pistol of
13 Sergeant -- Sheriff Palmer between his thumb and forefinger
14 and gingerly handed it back to the Sheriff saying, "Here's
15 your weapon, Sheriff"?

16 A. I don't think I saw a .357 magnum.

17 Q You weren't in the plane at all yourself when
18 this occurrence took place?

19 A. I saw Tom Creech hand the Sheriff a gun.

20 Q It was the gun of the Sheriff that had dislodged
21 from his holster out of his possession during the crash -- or
22 before said crashed landing?

23 A. I assume that's what happened, yes.

24 Q Who all was in the plane when that happened?

25 A. Myself, Tom Creech, Tom Taylor.

1 Q So, Tom Creech, Tom Taylor. And who did he hand
2 the gun to?

3 A Sheriff Palmer.

4 Q Then the Sheriff was there in the plane also?

5 A No, he was standing out on the -- one of the
6 landing gears outside the plane.

7 Q Now, did the conversation that you related to here,
8 take place subsequent to that occurrence?

9 A You mean subsequent, sir?

10 Q After the gun was in Tom's possession and handed to
11 the Sheriff?

12 A No, the conversation took place before.

13 Q The conversation you related to that Tom said
14 "This has made a Christian out of me, the jury should find me
15 guilty" took place before that gun incident?

16 A Yes.

17 Q How long prior?

18 A Possibly 30 minutes.

19 Q Did Tom in that conversation to you express any
20 fear of being down on the ground in the State of Nevada?

21 A Tom Creech?

22 Q Yes.

23 A Not in that -- Counselor, we set on the ground
24 there for about four and a half hours before we were rescued.
25 So, there was a lot of conversation during this four and a

1 half hour period of time we were on the ground. Is that what
2 you are asking me?

3 Q Yes, if you need that expanse of time to --

4 A Yes, I think he expressed some concern about being
5 in Nevada.

6 Q How long after the crash took place?

7 A I don't know.

8 Q Then in the conversation that you had with
9 Tom Creech where he related to you "This has made a
10 Christian out of me, the jury should find me guilty" you just
11 assumed that this related to the Idaho circumstances?

12 A That's correct.

13 Q Could it have just as well have applied to all of
14 the other circumstances that you had discussed with Tom and,
15 more specifically, the Barstow, California trip that you were
16 on at that time?

17 A I identified it with the Idaho case.

18 Q In your own mind?

19 A In my own mind.

20 Q Could Tom Creech have wasted all four of you at
21 that time, being in possession of a revolver?

22 A I guess you are going to have to ask him.

23 Q I mean, physically, was it a possibility?

24 A Certainly.

25 MR. ROBINSON: I have nothing further, Your Honor.

1 THE COURT: Any redirect?
2 MR. THOMAS: No, Your Honor.
3 THE COURT: You can step down.
4 Anything further?
5 MR. THOMAS: Nothing further.
6 THE COURT: Any objection?
7 MR. ROBINSON: Yes, Your Honor.
8 THE COURT: On what grounds?
9 MR. ROBINSON: The grounds would be that it's so evasive,
10 so vague in its meaning that probative value being tied
11 specifically to the deaths of Arnold and Bradford are a total
12 assumption and I don't believe that the foundation has been
13 laid, Your Honor, by the State for the admissibility of this
14 conversation to be given to this jury in this case.
15 THE COURT: Mr. Thomas?
16 MR. THOMAS: All of that goes to the weight and not to
17 the admissibility of the evidence.
18 THE COURT: I think the record in this case reflects
19 what -- I can take judicial notice of -- the jury trial had
20 been set on -- the date this occurred, May 4, 1975, the jury
21 trial had been scheduled at that time to take place in
22 Cascade, Idaho, commencing, I think, that very month. I'm
23 wondering if that doesn't, Mr. Robinson, unless nobody has
24 laid any foundation, that there was any other jury trial that
25 was pending at that time or he was involved in?

1 MR. ROBINSON: Your Honor, all I can say is to the
2 Court's observation, there is that because there was a
3 constant flow of investigation of so many other death
4 circumstances that all of them in Tom Creech's mind meant being
5 resolved in some kind of jury trial and not necessarily just
6 the immediate one that he was facing here in the State of Idaho.

7 MR. THOMAS: I would just say in response to that,
8 there's not a shred of evidence anyplace in that case that
9 there were any bodies and if anybody wants to know, we didn't
10 find any there.

11 MR. ROBINSON: If I may be heard further in that
12 regard.

13 THE COURT: Yes.

14 MR. ROBINSON: By this time, Your Honor, if my count is
15 correct, 12 bodies total have been recovered in other
16 jurisdictions and this was from information given to
17 Bud Mason and Sheriff Palmer on their interrogation and
18 questioning situations held with law enforcement officials
19 from several other states at that time.

20 THE COURT: Seems to me your objection doesn't go to
21 voluntariness, it goes to question of relevancy and
22 materiality and I'm simply going to hold, for purposes of this
23 hearing, that that statement was not pursuant to interrogation
24 and was a spontaneous statement without being the subject of
25 interrogation by the police and, therefore, required no

1 warning of rights and find that it was a voluntary statement.

2 I'm going to restrict the State in presenting this
3 evidence to not relate in any manner why the trip was being
4 taken or ---

5 MR. THOMAS: We did not intend to put on anything about
6 why it was being taken, Your Honor.

7 THE COURT: I would further restrict you and even
8 restrict you not to put on where it occurred in terms of --

9 MR. THOMAS: Are you talking about the State or facts
10 that it occurred in a place?

11 THE COURT: Geographical area.

12 MR. REMAKLUS: Your Honor, this does not preclude us
13 from proving the weather and the geography of the actual place
14 of crash and so on if we do not allude to the State or any
15 particular location; does it?

16 THE COURT: No, I take it that's part of the setting to
17 show the spontaneity of it.

18 MR. REMAKLUS: Yes, thank you.

19 MR. ROBINSON: May I be heard, Your Honor?

20 THE COURT: Yes.

21 MR. ROBINSON: I would be prepared at this time, of
22 course, to submit the testimony of Mr. Creech that it would go
23 directly to the point that he doesn't recall at all ever
24 having made the specific statement just related to by
25 Mr. Mason.

1 THE COURT: I think that goes solely to the weight and
2 not to the admissibility.
3 MR. ROBINSON: Right.
4 THE COURT: As far as I can see, there being no other
5 jury trial that's been shown to have been pending, or even set
6 at that time regarding "guys" that's been killed, I think it's
7 a reasonable inference that at least goes to the weight; whether
8 it related to the Idaho case, I think those objections would go
9 to weight and not to admissibility.
10 See if Mr. Boyd is here.
11 Are you ready to take up the matter of
12 Carol Spaulding's testimony?
13 MR. BOYD: Yes.
14 THE COURT: We'll take that up at this time, then.
15 I'll hear anything further you have to present,
16 Mr. Boyd, on the question of waiver.
17 MR. BOYD: I didn't hear you, sir.
18 THE COURT: The question of waiver by virtue of the
19 testimony she gave in connection with her plea to the
20 accessory after the fact charge.
21 MR. BOYD: Yes, I've been able to find authority for
22 the proposition that any -- that any testimony that she gave
23 at any prior proceedings would not constitute a waiver of any
24 proposed, or sought testimony in this proceeding.
25 I've been able to find a Washington case; which I

1 think is right in point, Stone against the State of Washington,
2 534 P.2d 1022. I found an Oregon case that I submit is in
3 point to support my proposition, State against Rawls,
4 451 P.2d 127. In addition I've found a Federal case,
5 United States against Johnson, 488 F.2d 1206.

6 I think those cases come out loud and clear on the
7 case of a witness having given testimony at a prior
8 proceeding voluntarily. Being asked to testify at a second
9 trial a witness can claim the privilege against self-incrimination
10 and it cannot be contended that the voluntariness of the prior
11 testimony carries through and constitutes a waiver in the
12 second proceeding.

13 THE COURT: Wish to respond?

14 MR. THOMAS: We haven't had an opportunity to look at
15 the cases. The only thing that we have to submit is the
16 case we mentioned this morning, In Re: Master Key litigation
17 and simply reiterate that our position is that since she did
18 testify under oath as to the facts, the same facts that we
19 are concerned with in her testimony here and since all of that
20 was exculpatory, she either waived the privilege by doing that
21 or in the alternative she has no grounds for making a claim of
22 self-incrimination because there wasn't anything
23 incriminating in it unless she now is going to take the
24 position that she perjured herself.

25 THE COURT: Wish to reply?

1 MR. BOYD: Well, other than I know that Mr. Thomas
2 probably hasn't had an opportunity to read those cases that
3 I've cited yet, but the Washington case, State against Stone,
4 sets forth what I consider to be some pretty good reasons for
5 the rule for which I'm contending; that being that any
6 testimony or statement she might have given in a previous
7 proceeding had to be taken in the context of that proceeding
8 and she would have no way of knowing at that time what evidence
9 might be sought in this case and she wasn't -- it's my
10 understanding she wasn't under cross-examination or anything
11 in the prior -- at the time she gave a prior statement.

12 Here, again, we're assuming something, Your Honor,
13 in that I still haven't seen the transcript. By the same
14 token, she might be subject to -- no doubt she will be subject
15 to cross-examination in this case. She just -- it's just an
16 entirely new and different ball game in this proceeding as
17 opposed to the previous case.

18 The Federal case I cited, Your Honor, even goes to
19 guilty pleas. Can I hand this up to you?

20 THE COURT: No, I -- yes, I guess I haven't seen that
21 Federal case, that's -- did you give them copies of the
22 Johnson case?

23 MR. BOYD: No, sir.

24 THE COURT: Want to argue further after looking at those
25 cases, Mr. Thomas?

1 MR. THOMAS: No, I don't think so, Your Honor. It
2 appears that there is simply a conflict in the case and this is
3 going to be a matter of first impression with this Court
4 because we don't have an Idaho case, or at least we haven't
5 been able to find one that deals with this question.

6 I do think the danger of incrimination is rather
7 slight because this witness has testified before as to the
8 very facts and they are not incriminating.

9 THE COURT: Well, I, of course, ruled on that point this
10 morning and intend to adhere to my ruling; that I feel there
11 is some danger of incrimination and she's entitled to the
12 privilege; unless there's been a waiver.

13 It seems to me these cases at least purport to
14 state the majority rule and they cite McConnell and other
15 writers on evidence which also support that this is a majority
16 rule.

17 I would adopt that rule and tend to follow it.
18 I will hold that there has been no waiver of the privilege,
19 therefore, to use the testimony of the witness, Carol Spaulding,
20 the State will have to avail itself of the immunity statute if
21 it wants to use her testimony.

22 MR. THOMAS: Well, we intend to do that.

23 THE COURT: All right. Well, if you tender a proper
24 request, then, under the Statute -- perhaps this is a little
25 premature, but I'm trying to avoid further court hearings.

1 If a proper request for a grant of immunity under
2 a statute were presented to the Court, would you want to be
3 heard on that or have any objection to the Court granting
4 immunity, Mr. Boyd?

5 MR. BOYD: No, it's my feeling at this time that if
6 immunity is granted Miss Spaulding will testify. That's our
7 intentions.

8 THE COURT: I see. From what you know of the case and
9 I appreciate you've had a limited contact with the case, but
10 what you do know of it and what you've been furnished, do you
11 see any basic reason why the Court should not grant immunity in
12 this case as far as you are concerned?

13 MR. BOYD: No, sir, not so long as we're confined to the
14 events and facts that are within the Court's jurisdiction to
15 grant immunity; anything that happened in the State of Idaho.

16 THE COURT: I take it -- yes, I'm sure this
17 Prosecuting Attorney cannot ask for immunity for anything
18 outside his jurisdiction, so --

19 MR. BOYD: It will be our position that if
20 Mr. Robinson calls her on his case and goes into matters
21 outside the State of Idaho that upon -- we'll claim that that's
22 privileged and the Court would not have power to grant
23 immunity in that situation.

24 THE COURT: I understand that.

25 It would be my intent, then, upon the presentation

1 of a proper request, written request for immunity under the
2 statute, to grant the immunity and require the witness to
3 testify, then.

4 MR. REMAKLUS: To avoid any confusion, Your Honor, you
5 use the phrase "proper written request under the statute".
6 Which of the two statutes are you referring to?

7 THE COURT: I'm referring to the only one that requires
8 the intervention of the Court. The first one doesn't require
9 the Court to even take part in it.

10 MR. REMAKLUS: Thank you.

11 THE COURT: All right, we'll be in recess until 9:30
12 tomorrow morning, then.

13 (Evening recess taken.)
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